

033  
No. 2833

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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THE CITY OF PORT TOWNSEND, a Municipal  
Corporation,

Plaintiff in Error,

vs.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of  
the Western District of Washington, Northern Division.

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Filed

SEP 23 1916

**F. D. Monckton,**  
Clerk.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Answer .....	181
Amended Complaint .....	2
Amended Reply .....	86
Amendments to Answer.....	79
Answer .....	25
Appearance of Charles E. Shepard, and Notice Thereof .....	77
Assignment of Errors.....	217
Bond on Writ of Error.....	225
Certificate of Clerk U. S. District Court to Tran- script of Record, etc.....	232
Citation on Writ of Error.....	236
Counsel, Names and Addresses of.....	1
Defendant's Draft of Proposed Bill of Excep- tions .....	133
Defendants Exceptions to Judgment and Order.	126
Defendant's Proposed Findings of Fact.....	92
Demurrer .....	22
DEPOSITION ON BEHALF OF PLAIN- TUFF:	
LAKE, H. H. ....	134
Cross-examination .....	136

	Index.	Page
DEPOSITIONS ON BEHALF OF DEFEND- ANT:		
ANDERSON, GEORGE .....		166
Recalled .....		175
Cross-examination .....		177
BISHOP, J. J. ....		172
Cross-examination .....		173
Recalled .....		173
COLEMAN, A. R.....		162
Cross-examination .....		165
Redirect Examination .....		166
DUDDENHAUSEN, AUGUST .....		168
Cross-examination .....		171
GNAGEY, U. D. ....		173
Cross-examination .....		174
LIDDERS, J. D. ....		180
Exceptions to the Refusal of the Court to Make Findings of Fact Requested by Defendant, and to the Findings as Made by the Court..		118
EXHIBITS:		
Exhibit "B"—Minutes of Meeting of City Council, February 15, 1898.....		188
Exhibit 1 Attached to Bill of Exceptions..		195
Findings of Fact and Conclusions of Law.....		109
Hearing on Settling, etc., Defendant's Proposed Bill of Exceptions .....		203
Judgment .....		125
Memorandum Decision on Demurrer to Amended Complaint .....		23
Names and Addresses of Counsel.....		1
Notice of Settling Bill of Exceptions.....		132

Index.	Page
Opinion .....	204
Opinion on Demurrer to Amended Complaint..	24
Order Allowing Amendment of Plaintiff's Reply .....	84
Order Allowing Amendment to Answer to be Filed .....	79
Order Allowing Defendant's Exceptions.....	128
Order Allowing Withdrawal of Bill of Excep- tions, etc. ....	131
Order Allowing Writ of Error.....	224
Order Directing Transmission of Original Ex- hibits to Appellate Court.....	229
Order Extending Time to March 1, 1916, to Pre- pare, etc., Proposed Bill of Exceptions....	130
Order Settling, etc., Bill of Exceptions.....	193
Petition for Writ of Error .....	222
Praeceptum for Transcript of Record.....	229
Reply to Amended Answer.....	186
Second Amended Complaint .....	27
Stipulation Extending Time to March 1, 1916, to Prepare, etc., Proposed Bill of Excep- tions .....	129
Stipulation for Transmission of Original Ex- hibits to Appellate Court .....	228
Stipulation Waiving Jury Trial.....	109
Writ of Error .....	234





*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 1872.

THE FIRST NATIONAL BANK of CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY of PORT TOWNSEND,

Defendant.

**Names and Addresses of Counsel.**

U. D. GNAGEY, Esq.,

Attorney for Plaintiff in Error, Port Town-  
send, Washington.

H. H. A. HASTINGS, Esq.,

Attorney for Plaintiff in Error, 64 Haller  
Building, Seattle, Washington.

L. B. STEDMAN, Esq.,

Attorney for Plaintiff in Error, 64 Haller  
Building, Seattle, Washington.

CHARLES E. SHEPARD, Esq.,

Attorney for Defendant in Error, 613 New  
York Block, Seattle, Washington.

[1\*]

\*Page-number appearing at foot of page of original certified Record.

*In the Circuit Court of the United States for the  
Western District of Washington, Northern Division.*

No. 1872.

THE FIRST NATIONAL BANK of CENTRAL  
CITY,

Plaintiff,

vs.

THE CITY of PORT TOWNSEND,

Defendant.

**Amended Complaint.**

The plaintiff, by leave of the Court amending the complaint in the above-entitled action, for an amended complaint, shows that the matter in dispute in this action, exclusive of interest and costs, exceeds the amount of two thousand dollars; that the plaintiff is a banking corporation organized under the laws of the United States, and is located and doing business at Central City, State of Colorado; and the City of Port Townsend, defendant, is a municipal corporation, a city of the third class, in the County of Jefferson, State of Washington, and at all the times herein mentioned had and still has less than twenty thousand inhabitants.

The plaintiff further shows that an action to recover damages for breach of contract, number 1258 in the Superior Court for the County of Jefferson, State of Washington, wherein the Bank of British Columbia, a corporation organized under a Royal Charter from the United Kingdom of Great Britain, located

and having its place of business at Victoria in the Province of British Columbia, was plaintiff and the aforesaid City of Port Townsend was defendant, was at issue and pending on January 19, 1898. That the trial of said cause was then and there had by the Court without a jury, the trial thereof by a jury having been waived, and the decision of the Court duly given in writing, by which the Court found and decided that the defendant was indebted to the plaintiff in the sum of eighteen thousand, six hundred dollars and fifteen cents [2] (\$18,600.15) and directed judgment to be entered therefor in favor of the plaintiff against the defendant; and on February 1, 1898, judgment was duly entered upon said finding and decision against the said defendant and in favor of said plaintiff for the sum of eighteen thousand six hundred dollars and fifteen cents and the costs and disbursements of the action.

The plaintiff further shows that, at a regular meeting of the City Council of said City of Port Townsend which commenced on the fifteenth day of February, 1898, and continued to and upon the sixteenth and seventeenth days of said February, the manner of paying said judgment, which remained in full force, unpaid and not appealed from was matter duly under consideration by said City Council; that the said City Council then and there proposed to the said Bank of British Columbia to pay the said judgment by the issue of warrants drawn on the indebtedness fund of said City for the amount thereof with interest and costs, drawing interest at the rate of six per cent per annum from date until paid; that said Bank of Brit-

ish Columbia then and there accepted and agreed to said proposal and the said City Council, pursuant to said proposal and acceptance thereof and also pursuant to the statute, at the same meeting duly ordered and directed that warrants be issued in usual form upon the indebtedness fund drawing interest at the rate of six per cent per annum from date until paid, for the satisfaction of said judgment.

The plaintiff further shows that on the 18th day of February, 1898, pursuant to the said proposal of the said City Council and acceptance thereof, the said order of the City Council and of the statutes relating thereto, the Mayor and City Clerk of said City duly issued thirty-eight warrants in form and of substance conforming to the said proposal, acceptance thereof and said order of said City Council, amounting together to eighteen thousand six hundred eighty-eight dollars [3] and fifteen cents (\$18,688.15), the full amount of said judgment with the costs and interest. Each of said warrants was dated February 18, 1898, and stated that it was issued for part satisfaction of said judgment and given a distinguishing number in a series of one hundred and fifty-eight warrants which the defendant City on said 18th day of February 1898 drew on its indebtedness fund for the satisfaction of judgments which had theretofore been rendered against said City, which distinguishing numbers are the following viz: 3, 4, 5, 6, 7, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 101, 102, 103, 104, 105, 106, 115, 116, 117, 118, 119, 120, 128, 129, 130, 131, 132, 133, 142, 143, 144, 145, 146.

The plaintiff further shows that the warrants Nos.

116, 117, 118, 119, 120, 128, 129, 130, 131, 132, 133, 142, 143, 144, 145 and 146 were each issued payable to the above-named Bank of British Columbia or order; That on the 19th day of February, 1898, said last-mentioned warrants were each duly presented by said Bank of British Columbia to the Treasurer of the City of Port Townsend for payment and payment thereof demanded; that said Treasurer refused to pay the same for want of funds and then and there so endorsed upon the back of each said warrant. That thereafter the said Bank of British Columbia duly endorsed, assigned and transferred each of said last-mentioned sixteen warrants to this plaintiff, who, at the commencement of this action, was and still is the owner and holder of each and all of said sixteen warrants.

The plaintiff further shows that in the month of May, 1910 and before the commencement of this action it presented for payment each of said sixteen warrants to the treasurer of said City of Port Townsend at his office in said city and demanded the payment thereof and the said treasurer then and there refused to pay each and every of the said warrants.

The plaintiff further shows that the distinguishing numbers [4] and the amounts for which said one hundred and fifty-eight warrants were drawn are respectively as follows, viz:

No. 2, for \$1,548.12	No. 3, for \$500.00
“ 4, “ 500.00	“ 5, “ 500.00
“ 6, “ 500.00	“ 7, “ 308.15
“ 8, “ 247.58	“ 9, “ 487.00
“ 10, “ 96.30	“ 11, “ 500.00

*The City of Port Townsend vs.*

“ 12, “	250.00	“ 13, “	250.00
“ 14, “	250.00	“ 15, “	250.00
“ 16, “	500.00	“ 17, “	500.00
“ 18, “	500.00	“ 19, “	500.00
“ 20, “	500.00	“ 21, “	500.00
“ 22, “	500.00	“ 23, “	500.00
“ 24, “	500.00	“ 25, “	500.00
“ 26, “	500.00	“ 27, “	250.00
“ 28, “	250.00	“ 29, “	500.00
“ 30, “	500.00	“ 31, “	500.00
“ 32, “	500.00	“ 33, “	500.00
“ 34, “	500.00	“ 35, “	500.00
“ 36, “	500.00	“ 37, “	500.00
“ 38, “	500.00	“ 39, “	500.00
“ 40, “	500.00	“ 41, “	500.00
“ 42, “	500.00	“ 43, “	500.00
“ 44, “	500.00	“ 45, “	250.00
“ 46, “	125.00	“ 47, “	20.00
“ 48, “	605.00	“ 49, “	500.00
“ 50, “	440.00	“ 51, “	600.00
“ 52, “	600.00	“ 53, “	250.00
“ 54, “	250.00	“ 55, “	250.00
“ 56, “	250.00	“ 57, “	247.30
“ 58, “	252.70	“ 59, “	250.00
“ 60, “	250.00	“ 61, “	500.00
“ 62, “	500.00	“ 63, “	500.00

[5]

“ 64, “	120.00	“ 65, “	500.00
“ 66, “	500.00	“ 67, “	500.00
“ 68, “	500.00	“ 69, “	500.00
“ 70, “	500.00	“ 71, “	500.00
“ 72, “	500.00	“ 73, “	500.00

“ 74, “	500.00	“ 75, “	500.00
“ 76, “	500.00	“ 77, “	500.00
“ 78, “	500.00	“ 79, “	525.00
“ 80, “	25.00	“ 81, “	25.00
“ 82, “	25.00	“ 83, “	25.00
“ 84, “	25.00	“ 85, “	25.00
“ 86, “	25.00	“ 87, “	25.00
“ 88, “	25.00	“ 89, “	250.00
“ 90, “	500.00	“ 91, “	500.00
“ 92, “	500.00	“ 93, “	308.25
“ 94, “	691.75	“ 95, “	500.00
“ 96, “	500.00	“ 97, “	500.00
“ 98, “	500.00	“ 99, “	250.00
“ 100, “	250.00	“ 101, “	500.00
“ 102, “	500.00	“ 103, “	500.00
“ 104, “	500.00	“ 105, “	500.00
“ 106, “	500.00	“ 107, “	500.00
“ 108, “	500.00	“ 109, “	500.00
“ 110, “	500.00	“ 111, “	500.00
“ 112, “	500.00	“ 113, “	500.00
“ 114, “	500.00	“ 115, “	500.00
“ 116, “	500.00	“ 117, “	500.00
“ 118, “	500.00	“ 119, “	500.00
“ 120, “	500.00	“ 121, “	500.00
“ 122, “	500.00	“ 123, “	500.00
“ 124, “	500.00	“ 125, “	500.00
“ 126, “	500.00	“ 127, “	500.00
“ 128, “	500.00	“ 129, “	500.00
“ 130, “	500.00	“ 131, “	500.00
[6] “ 132, “	500.00	“ 133, “	500.00
“ 134, “	434.57	“ 135, “	525.53

“ 136, “	15.18	“ 137, “	420.00
“ 138, “	500.00	“ 139, “	471.00
“ 140, “	373.44	“ 141, “	607.30
“ 142, “	500.00	“ 143, “	500.00
“ 144, “	500.00	“ 145, “	500.00
“ 146, “	380.00	“ 147, “	500.00
“ 148, “	236.50	“ 149, “	500.00
“ 150, “	263.50	“ 151, “	500.00
“ 152, “	500.00	“ 153, “	500.00
“ 154, “	500.00	“ 155, “	500.00
“ 156, “	500.00	“ 157, “	500.00
“ 158, “	500.00	“ 159, “	309.30

Said warrants together amounting to sixty-seven thousand four hundred eighty-three dollars and forty-seven cents (\$67,483.47).

The plaintiff further shows that the indebtedness of said City of Port Townsend, which at the time of the issue of the said one hundred and fifty-eight warrants was entitled to be paid out of money belonging to the indebtedness fund, before any money then in that fund or which should thereafter come into the same would be applicable to the payment of the said one hundred and fifty-eight warrants in numerical order, has been paid, except about three hundred dollars, all of which unpaid indebtedness was called in for payment prior to January, 1909.

The plaintiff further shows that the said City of Port Townsend has levied taxes for the payment of indebtedness from the indebtedness fund of said city as follows, viz:

In October, 1898, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.



In October, 1899, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00. [7]

In September, 1900, 4/10 mill on the dollar upon a property assessment of \$1,161,700.00.

In October, 1901, 1 55/100 mill on the dollar upon a property assessment of \$1,067,932.00.

In October, 1902, 1 55/100 mill on the dollar upon a property assessment of \$855,870.00.

In October, 1903, 1 55/100 mill on the dollar upon a property assessment of \$869,973.00.

In October, 1904, 1 mill on the dollar upon a property assessment of \$936,214.00.

In October, 1905, 1 mill on the dollar upon a property assessment of \$960,967.00.

In October, 1906, 1 50/100 mill on the dollar upon a property assessment of \$1,030,480.00.

In October, 1907, 2 mills on the dollar upon a property assessment of \$965,160.00.

In October, 1908, 1 mill on the dollar upon a property assessment of \$1,291,142.00.

And that said city has since last-mentioned levy neglected and omitted to levy any tax for the payment of indebtedness from the indebtedness fund.

The plaintiff further shows that the unpaid city taxes of the City of Port Townsend, which were made an asset of the indebtedness fund of said City by Section Seven of an Act of the Legislature of the State of Washington entitled, "An Act relating to the taxes and funds of Municipal Corporations having less than twenty thousand inhabitants," approved March 16, 1897, amounted to a large sum; that about the years 1902 and 1904, such portions of said unpaid

taxes as had not previously been collected or otherwise realized in money, became merged in the real estate upon which they were a charge, the title to which was acquired by the County of Jefferson, State of Washington, through the issue to said County of certificates of [8] delinquency against said real estate and proceedings to foreclose the tax liens embraced in such certificates of delinquency and the purchase of such real estate under said foreclosure proceedings, pursuant to the statutes.

The plaintiff further shows that the assets of the indebtedness fund of said City of Port Townsend now consist of:

a. Money which has been paid over to the Treasurer of said City by the Treasurer of the said County of Jefferson the collector of taxes for said city, which he had collected from the taxes so as aforesaid levied by said City for the payment of indebtedness out of the indebtedness fund, and not yet applied to the payment of such indebtedness, and money apportioned to said City as its share of the money derived by the said County of Jefferson from the sale by said County of parcels of the real estate, title to which said County of Jefferson acquired in the manner above stated, and not yet applied to the payment of indebtedness which was or is entitled to be paid from said indebtedness fund, which said moneys remaining unapplied as aforesaid, amount altogether to about the sum of ten thousand dollars.

b. Uncollected taxes levied as aforesaid by said City for the payment of indebtedness from said indebtedness fund not exceeding in amount the sum of

three hundred dollars, and the share which the said City of Port Townsend will be entitled to receive out of money which the said County of Jefferson may realize from the sale of the unsold parcels of real estate, title to which said County acquired in the manner above described, the total cash value of which unsold real estate is not above the sum of ten thousand dollars and the share of the said City of Port Townsend of the price for which it may be sold by said County will not be greater than one third thereof.

The plaintiff further shows that the aforementioned ten thousand dollars has accumulated in the hands of the City [9] Treasurer of said City by receiving smaller sums from time to time; that on March 1, 1910, the said accumulation was more than sufficient to pay in full, including the interest, the said warrant numbered 2; nevertheless, the said City Treasurer did not then, nor before, nor since, call in said warrant for payment, nor did he ever call in for payment any of the afore-mentioned warrants numbered 2 to 159, nor ever pay any thereof.

## SECOND CAUSE OF ACTION.

For a second and separate cause of action the plaintiff shows to the Court that an action for damages for breach of contract, number 1538 in the Superior Court for the County of Jefferson, State of Washington, wherein the Manchester Savings Bank, which was a corporation incorporated and organized under the laws of the State of New Hampshire, was plaintiff, and the City of Port Townsend was defendant, was at issue and pending on January 20th, 1898.

That the trial of the said cause was then and there had by the Court without a jury, the trial thereof by a jury having been waived, and the decision of the Court duly given in writing, by which the Court found and decided that the plaintiff was entitled to judgment against the said defendant for the sum of seven thousand seven hundred eighty-eight dollars and seventy-one cents (\$7,788.71) and the costs and disbursements to be taxed; which finding and decision was filed with the clerk on February 2d, 1898, and on the 5th day of February, 1898, judgment in favor of the plaintiff and against the defendant for the sum of seven thousand seven hundred eighty-eight dollars and seventy-one cents (\$7,788.71) and that the said judgment should bear interest from date until paid at the rate of ten per cent per annum and that the plaintiff should also recover his costs and disbursements of the action to be taxed, was duly entered.

The plaintiff further shows that at a regular meeting of [10] the City Council of said City of Port Townsend which commenced on the fifteenth day of February, 1898, and continued to and upon the sixteenth and seventeenth days of said February, the manner of paying said judgment, which remained in full force, unpaid and not appealed from, was matter duly under consideration by said City Council that the said City Council then and there proposed to the said Manchester Savings Bank to pay the said judgment by the issue of warrants drawn on the indebtedness fund of said City for the amount thereof with interest and costs, drawing interest at the rate of six per cent per annum from date until paid; that said

Manchester Savings Bank then and there accepted and agreed to said proposal and the said City Council, pursuant to said proposal and acceptance thereof and also pursuant to the statute, at the same meeting duly ordered and directed that warrants be issued in usual form upon the indebtedness fund, drawing interest at the rate of six per cent per annum from date until paid, for the satisfaction of said judgment.

The plaintiff further shows that on the 18th day of February, 1898, pursuant to the said proposal of the said City Council and acceptance thereof, the said order of the City Council, and of the statutes relating thereto, the Mayor and City Clerk of said city duly issued nineteen warrants in form and of substance conforming to the said proposal, acceptance thereof and said order of said City Council, amounting together to seven thousand eight hundred and nine dollars and thirty cents (\$7,809.30), the full amount of said judgment with the costs and interest. Each of said warrants was dated February 18, 1898, and stated that it was issued for part satisfaction of said judgment and given a distinguishing number in a series of one hundred and fifty-eight warrants which the defendant city, on said 18th day of February, 1898, drew on its indebtedness fund for the satisfaction of judgments which had theretofore [11] been rendered against said city, which distinguishing numbers are the following, viz: 20, 49, 59, 60, 99, 100, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159.

The plaintiff further shows that the warrants Nos. 49, 60, 100, 149, 150, 151, 152, 153, 154, 155, 156, 157,

158 and 159 were each issued payable to the above-named Manchester Saving Bank or order. That on the 18th day of February 1898, said last-mentioned warrants were each duly presented by said Manchester Savings Bank to the Treasurer of the City of Port Townsend for payment and payment thereof demanded; that said Treasurer refused to pay the same for want of funds and then and there so endorsed upon the back of each said warrant. That thereafter the said Manchester Savings Bank duly endorsed, assigned and transferred each of said fourteen last-mentioned warrants to this plaintiff, who at the commencement of this action, was and still is the owner and holder of each and all of said fourteen warrants.

The plaintiff further shows that in the month of May, 1910, and before the commencement of this action it presented for payment each of said fourteen warrants to the Treasurer of said City of Port Townsend at his office in said city and demanded the payment thereof and the said Treasurer then and there refused to pay each and every of said warrants.

The plaintiff further shows that the distinguishing numbers and the amounts for which said one hundred and fifty-eight warrants were drawn are respectively as follows, viz.:

No.	2, for \$1,548.12	No.	3, for \$500.00
“	4, “ 500.00	“	5, “ 500.00
“	6, “ 500.00	“	7, “ 308.15
“	8, “ 247.58	“	9, “ 487.00

“	10,	“	96.30	“	11,	“	500.00
“	12,	“	250.00	“	13,	“	250.00
“	14,	“	250.00	“	15,	“	250.00

[12]

“	16,	“	500.00	“	17,	“	500.00
“	18,	“	500.00	“	19,	“	500.00
“	20,	“	500.00	“	21,	“	500.00
“	22,	“	500.00	“	23,	“	500.00
“	24,	“	500.00	“	25,	“	500.00
“	26,	“	500.00	“	27,	“	250.00
“	28,	“	250.00	“	29,	“	500.00
“	30,	“	500.00	“	31,	“	500.00
“	32,	“	500.00	“	33,	“	500.00
“	34,	“	500.00	“	35,	“	500.00
“	36,	“	500.00	“	37,	“	500.00
“	38,	“	500.00	“	39,	“	500.00
“	40,	“	500.00	“	41,	“	500.00
“	42,	“	500.00	“	43,	“	500.00
“	44,	“	500.00	“	45,	“	250.00
“	46,	“	125.00	“	47,	“	20.00
“	48,	“	605.00	“	49,	“	500.00
“	50,	“	440.00	“	51,	“	600.00
“	52,	“	600.00	“	53,	“	250.00
“	54,	“	250.00	“	55,	“	250.00
“	56,	“	250.00	“	57,	“	247.30
“	58,	“	252.70	“	59,	“	250.00
“	60,	“	250.00	“	61,	“	500.00
“	62,	“	500.00	“	63,	“	500.00
“	64,	“	120.00	“	65,	“	500.00
“	66,	“	500.00	“	67,	“	500.00
“	68,	“	500.00	“	69,	“	500.00
“	70,	“	500.00	“	71,	“	500.00

“	72,	“	500.00	“	73,	“	500.00
“	74,	“	500.00	“	75,	“	500.00
“	76,	“	500.00	“	77,	“	500.00
“	78,	“	500.00	“	79,	“	25.00
“	80,	“	25.00	“	81,	“	25.00

[13]

“	82,	“	25.00	“	83,	“	25.00
“	84,	“	25.00	“	85,	“	25.00
“	86,	“	25.00	“	87,	“	25.00
“	88,	“	25.00	“	89,	“	250.00
“	90,	“	500.00	“	91,	“	500.00
“	92,	“	500.00	“	93,	“	308.25
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“	96,	“	500.00	“	97,	“	500.00
“	98,	“	500.00	“	99,	“	250.00
“	100,	“	250.00	“	101,	“	500.00
“	102,	“	500.00	“	103,	“	500.00
“	104,	“	500.00	“	105,	“	500.00
“	106,	“	500.00	“	107,	“	500.00
“	108,	“	500.00	“	109,	“	500.00
“	110,	“	500.00	“	111,	“	500.00
“	112,	“	500.00	“	113,	“	500.00
“	114,	“	500.00	“	115,	“	500.00
“	116,	“	500.00	“	117,	“	500.00
“	118,	“	500.00	“	119,	“	500.00
“	120,	“	500.00	“	121,	“	500.00
“	122,	“	500.00	“	123,	“	500.00
“	124,	“	500.00	“	125,	“	500.00
“	126,	“	500.00	“	127,	“	500.00
“	128,	“	500.00	“	129,	“	500.00
“	130,	“	500.00	“	131,	“	500.00
“	132,	“	500.00	“	133,	“	500.00



“ 134, “	434.57	“ 135, “	525.53
“ 136, “	15.18	“ 137, “	420.00
“ 138, “	500.00	“ 139, “	471.00
“ 140, “	373.44	“ 141, “	607.30
“ 142, “	500.00	“ 143, “	500.00
“ 144, “	500.00	“ 145, “	500.00
“ 146, “	380.00	“ 147, “	500.00
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“ 148, “	236.50	“ 149, “	500.00
“ 150, “	263.50	“ 151, “	500.00
“ 152, “	500.00	“ 153, “	500.00
“ 154, “	500.00	“ 155, “	500.00
“ 156, “	500.00	“ 157, “	500.00
“ 158, “	500.00	“ 159, “	309.30

Said warrants together amounting to sixty-seven thousand four hundred eighty-three dollars and forty-seven cents (\$67,483.47).

The plaintiff further shows that the indebtedness of said City of Port Townsend, which at the time of the issue of the said one hundred and fifty-eight warrants was entitled to be paid out of money belonging to the indebtedness fund, before any money then in that fund or which should thereafter come into the same would be applicable to the payment of the said one hundred and fifty-eight warrants in numerical order, has been paid except about three hundred dollars, all of which unpaid indebtedness was called in for payment prior to January, 1909.

The plaintiff further shows that the said City of Port Townsend has levied taxes for the payment of indebtedness from the indebtedness fund of said city as follows, viz.:

In October, 1898, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.

In October, 1899, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.

In September, 1900, 4/10 mill on the dollar upon a property assessment of \$1,161,700.00.

In October, 1901, 1 55/100 mill on the dollar upon a property assessment of \$1,067,932.00.

In October, 1902, 1 55/100 mill on the dollar upon a property assessment of \$855,870.00.

In October, 1903, 1 55/100 mill on the dollar upon a property assessment of \$69,973.00. [15]

In October, 1904, 1 mill on the dollar upon a property assessment of \$936,214.00.

In October, 1905, 1 mill on the dollar upon a property assessment of \$960,967.00.

In October, 1906, 1 50/100 mill on the dollar upon a property assessment of \$1,030,480.00.

In October, 1907, 2 mills on the dollar upon a property assessment of \$965,160.00.

In October, 1908, 1 mill on the dollar upon a property assessment of \$1,291,142.00.

And that said city has since said last-mentioned levy neglected and omitted to levy any tax for the payment of indebtedness from the indebtedness fund.

The plaintiff further shows that the unpaid city taxes of the City of Port Townsend, which were made an asset of the indebtedness fund of said city by Section Seven of an Act of the Legislature of the State of Washington entitled "An Act relating to the taxes and funds of Municipal Corporations

having less than twenty thousand inhabitants," approved March 16, 1897, amounted to a large sum; that about the years 1902 and 1904, such portions of said unpaid taxes as had not previously been collected or otherwise realized in money, became merged in the real estate upon which they were a charge, the title to which was acquired by the County of Jefferson, State of Washington, through the issue to said county of certificates of delinquency against said real estate and proceedings to foreclose the tax liens embraced in such certificates of delinquency and the purchase of such real estate under said foreclosure proceedings, pursuant to the statutes.

The plaintiff further shows that the assets of the indebtedness fund of said City of Port Townsend now consist of:

a. Money which has been paid over to the Treasurer of said city by the Treasurer of the said County of Jefferson, the [16] Collector of Taxes for said city, which he had collected from the taxes so as aforesaid levied by said city for the payment of indebtedness out of the indebtedness fund, and not yet applied to the payment of such indebtedness, and money apportioned to said city as its share of the money derived by the said county of Jefferson from the sale by said county of parcels of the real estate, title to which said County of Jefferson acquired in the manner above stated, and not yet applied to the payment of indebtedness which was or is entitled to be paid from said indebtedness fund, which said moneys remaining unapplied as aforesaid, amount altogether to about the sum of ten thousand dollars.

b. Uncollected taxes levied as aforesaid by said city for the payment of indebtedness from said indebtedness fund not exceeding in amount the sum of three hundred dollars, and the share which the said City of Port Townsend will be entitled to receive out of money which the said County of Jefferson may realize from the sale of the unsold parcels of real estate title to which said county acquired in the manner above described, the total cash value of which unsold real estate is not above the sum of ten thousand dollars and the share of the said City of Port Townsend of the price for which it may be sold by said county will not be greater than one-third thereof.

The plaintiff further shows that the aforementioned ten thousand dollars has accumulated in the hands of the City Treasurer of said city by receiving smaller sums from time to time; that on March 1, 1910, the said accumulation was more than sufficient to pay in full, including the interest, the said warrant numbered 2; nevertheless the said City Treasurer did not then, nor before, nor since, call in said warrant for payment, nor did he ever call in for payment any of the aforementioned warrants numbered 2 to 159, nor ever pay any thereof. [17]

Wherefore, the plaintiff demands judgment against the defendant for seven thousand eight hundred and eighty dollars, the aggregate amount of the warrants numbered 116, 117, 118, 119, 120, 128, 129, 130, 131, 132, 133, 142, 143, 144, 145, 146, issued to the Bank of British Columbia, with interest on said sum at the rate of six per cent per annum since

the 18th day of February, 1898. Also for six thousand seventy-two dollars and eighty cents, the aggregate amount of the warrants numbered 49, 60, 100, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, issued to the Manchester Savings Bank, with interest on said sum at the rate of six per cent per annum since the 18th day of February, 1898, besides the costs and disbursements of this action.

Dated June 12, 1911.

J. A. BENTLEY,  
Attorney for Plaintiff. [18]

State of Washington,  
County of King,—ss.

J. A. Bentley, first being duly sworn, deposes and says that he is the attorney for the plaintiff in the foregoing amended complaint described; that the plaintiff is a nonresident corporation and there is no officer of said corporation in the said County of King, nor in the State of Washington, and for that reason this affidavit of verification is made by deponent. This affiant has in his possession all of the warrants of the City of Port Townsend upon which this action is founded and has personally examined a great portion of the records which contain the data upon which the allegations are founded and says that he verily believes that each and every of the allegations of the complaint are true.

J. A. BENTLEY.

Subscribed and sworn to before the undersigned  
this 13th day of June, 1911.

SAM'L D. BRIDGES,  
Clerk United States Court.  
B. O. Wright,  
Deputy.

[Indorsed]: Amended Complaint. Filed U. S.  
Circuit Court, Western District of Washington.  
June 13, 1911. Sam'l D. Bridges, Clerk. B. O.  
Wright, Deputy. [19]

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*In the United States Circuit Court for the Western  
District of Washington, Northern Division.*

No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Demurrer.**

Comes now the defendant herein and demurs to  
the Amended Complaint of plaintiff on the following  
grounds:

1. On the ground that the said complaint does not  
state facts sufficient to constitute a cause of action.
2. On the ground that the said action has not  
been commenced within the time required by law.

U. D. GNAGEY,  
Attorney for Defendant.

[Indorsed]: Demurrer. Filed U. S. Circuit Court, Western District of Washington. July 10, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy. [20]

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*United States Circuit Court, Western District of Washington, Northern Division.*

No. 1872.

FILED DEC. 1, 1911.

FIRST NATIONAL BANK OF CENTRAL CITY,  
Plaintiff,

vs.

CITY OF PORT TOWNSEND,

Defendant.

**Memorandum Decision on Demurrer to Amended Complaint.**

The law of this case has been settled by the decision of the Circuit Court of Appeals, 184 Fed. Rep 574. By that decision the plaintiff is entitled to recover a money judgment in this court for an amount of indebtedness payable out of a designated fund which the City of Port Townsend is legally obligated to provide, such judgment to be the basis for proceedings to compel, by mandamus, the performance of the legal duty of the city to levy and collect taxes necessary to meet its obligations payable out of said special fund. The allegations of the amended complaint are sufficiently explicit to show that there is a large amount of indebtedness to be provided for; that the available funds added to taxes levied and

not collected, are inadequate and that the city has neglected to levy additional taxes and it is a legal conclusion therefrom that the city is derelict and subject to coercive process by a writ of mandamus.

The argument in support of the demurrer appears to be based upon the single proposition that the case is not ripe for a proceeding to obtain a writ of mandamus because the amended complaint fails to allege that the city has refused to make an additional levy of taxes after a demand. It is the opinion of the Court that this point is not well taken. It is true that [21] the case is not ripe for the issuance of a mandamus, but, in the legal order of procedure, the plaintiff should obtain a judgment, previous to making a demand, to be followed by an application for a mandamus.

The demurrer is overruled and the defendant's request for thirty days time within which to answer the complaint is granted.

C. H. HANFORD,  
United States District Judge.

[Indorsed]: Memorandum Decision on Demurrer to Amended Complaint. Filed U. S. Circuit Court, Western District of Washington. Dec. 1, 1911. James C. Drake, Clerk. B. O. Wright, Deputy. [22]



*In the Circuit Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

FIRST NATIONAL BANK OF CENTRAL CITY,  
Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,  
Defendant.

**Answer.**

Comes now the above-named defendant, City of Port Townsend, and for answer to the amended complaint of plaintiff alleges as follows:

1. Defendant admits all the allegations of plaintiff's amended complaint contained in lines ten to twenty, inclusive, on page one thereof.

2. Defendant admits all the allegations contained in lines thirteen to twenty-one to and including the word, warrant, in said line twenty-two, on page three of said complaint; also all the allegations contained in lines four to twelve, inclusive, on page eleven of said complaint.

3. Defendant admits all the allegations contained in lines twenty-seven to thirty-two, inclusive, on page three; also all the allegations contained in lines eighteen to twenty-three, inclusive, on page eleven of said complaint.

4. Defendant admits all the allegations contained in said complaint beginning with line thirty-three on page three down to and including line fifteen on page six.

5. Defendant admits all the allegations contained in said complaint beginning with line seventeen on page six down to and including line twenty-one on page seven. [23]

6. Defendant denies each and every other allegation contained in the said complaint except as the same are hereinafter expressly admitted or specifically set forth.

As an affirmative defense to the said action the said defendant alleges as follows:

1. That the City of Port Townsend, Washington, was duly incorporated by the act of the legislative assembly of the Territory of Washington entitled "An Act to incorporate the City of Port Townsend" approved on the 28th day of November, 1881, and the act amendatory thereto entitled "An Act to Amend an Act to Incorporate the City of Port Townsend, Washington," approved November 28, 1883, and on August 16, 1896, the said city was duly re-incorporated under the general laws of the State of Washington as a city of the third class and ever since said time has been and now is a city of the third class in said state.

2. That the warrants described in plaintiff's amended complaint as numbered, respectively, 116, 117, 118, 119, 120, 128, 129, 130, 131, 132, 133, 142, 143, 144, 145, and 146, drawn on the Indebtedness Fund of said city, were ordered by the city council of said city on the 17th day of February, 1898, and were issued on February 18, 1898, in satisfaction of a judgment rendered against the City of Port Townsend on February 1, 1898, in cause No. 1258 of the

Superior Court of the State of Washington for Jefferson County, wherein The Bank of British Columbia was plaintiff and the City of Port Townsend was defendant; that the said judgment was so rendered against the said city upon the complaint in said action and upon findings of fact substantially following the said complaint, and a true and correct copy of the said complaint upon which the said judgment was so rendered is as follows: [24]

*In the Superior Court of Jefferson County Washington.*

BANK OF BRITISH COLUMBIA, OF VICTORIA, B. C.,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Second Amended Complaint.**

To the Hon. R. A. BALLINGER, Judge of the Above-entitled Court:

Comes now the plaintiff and by leave of Court first obtained, files this its second amended complaint, and for a first cause of action against the said defendant, complains and alleges:

I.

That the plaintiff the Bank of British Columbia of Victoria, B. C. was at all the times hereinafter mentioned, and now is, a corporation duly incorporated and doing business under a Royal Charter from the United Kingdom of Great Britain, with

its place of business at Victoria, in the Province of British Columbia.

## II.

That the City of Port Townsend is a municipal corporation, duly incorporated and created under the Act of the Legislature of the Territory of Washington, entitled, "An Act to incorporate the City of Port Townsend" approved November 28th, 1881, and the Act of the Legislaure of the Territory of Washington, entitled "An Act to amend an act entitled 'An Act to incorporate the City of Port Townsend,' approved November 28th, 1881," which said last act was approved November 28th, 1883.

## III.

That on or about the 26th day of February, 1890, the said defendant, the City of Port Townsend duly made and entered into an agreement with one Charles O'Brien, for the grading and filling of Monroe Street, in said City of Port Townsend, and by which said agreement, the said defendant agreed to make and deliver to the said Charles [25] O'Brien, warrants upon the Treasurer of said city, payable to the order of said Charles O'Brien, for the amount due and payable to him, under and by virtue of said contract, said warrants to be drawn upon and to be paid out of the special fund to be known as the Monroe Street (Grade and Fill) Fund, which said fund the said City of Port Townsend agreed to provide and create according to law.

## IV.

That the said Charles O'Brien duly performed each and all of the conditions and requirements of

said agreement, as was required of him and that on or about the 5th day of April, 1890, the said defendant duly made and delivered to the said Charles O'Brien, in part payment for the work and labor performed by him and materials furnished by him, under said contract, a warrant, which is substantially in the words and figures following, to wit:

“No. 81.

City of Port Townsend, April 5, A. D. 1890.

By Order of City Council of April 4, A. D. 1890.

The Treasurer of the City of Port Townsend, Washington Territory:

Pay to Charles O'Brien, or order, Four hundred ninety-one 64/100 Dollars, and charge the same to the account of Monroe Street (Grade and Fill) Fund being Mch. 90 estimate of street for 26,221 feet of cribbing. The City of Port Townsend guarantees the principal with interest at ten per cent per annum.

J. A. KUHN,

Mayor of the City of Port Townsend.

Attest: DEL CARY SMITH,  
City Clerk.

\$491.64.

[Endorsements]: Presented for Payment Apl. 5th, 1890, and not paid for want of funds.

WALTER BOWEN,

City Treas.

Sept. 10/91 Received on principal . . . \$245.82

“ “ “ “ Interest . . . . 35.15

FIRST NATIONAL BANK.

Per SLOCUM.

CHARLES O'BRIEN. [26]

Subscribed and sworn to before me this 17th day of April.

[Notarial Seal]

DEL CARY SMITH,  
Notary Public."

V.

That afterwards, to wit, on or about the 5th day of April, 1890, the said warrant was endorsed, for value received, to this plaintiff, and plaintiff is now the owner and holder thereof, and that on the 10th day of September, 1891, the said defendant paid the sum of \$35.15 interest thereon to that date, and on said day paid the further sum of \$245.82 on account of the principal thereof, and that there is now due and owing to the plaintiff thereon the sum of \$245.82, with interest thereon at the rate of ten per cent per annum from the 10th day of September, 1891.

VI.

That the said defendant, the City of Port Townsend, by general ordinance, did prescribe the mode in which the charge on the respective owners of lots or land and on the lots and lands shall be assessed and determined for the purpose of the said improvement, which said ordinance is entitled as follows: "Ordinance No. 160. An Ordinance prescribing the mode in which the charge on the respective owners of lots or lands, and on the lots or lands, shall be assessed, determined and collected for street improvements," which said ordinance passed the Council, March 4th, 1887, and was approved by D. W. Smith, Mayor on the 4th day of March, 1887, and the said defendant, the said City of Port Townsend, did duly make, create and levy a special tax and assessment for such

improvement on the lots and parcels of land fronting on such street, highway or alley aforesaid, sufficient to pay the expenses of such improvement; that the said City of Port Townsend has failed, neglected and refused to collect the said assessment and tax, and has failed, neglected and refused to create and provide the fund for the payment and redemption of said warrant, or any part thereof, except as hereinbefore alleged to have [27] been paid, and the said City of Port Townsend has failed, neglected and refused and still fails, neglects and refuses to collect the charge, and enforce the lien for such special tax and assessment as provided by law.

#### VII.

Plaintiff further alleges that the time allowed by law to collect the assessment and special tax aforesaid, and provide the fund for the redemption and payment of said warrant and collect the same from the property liable therefor, and to be assessed therefor, has long since elapsed, and that the said defendant, the City of Port Townsend is barred by the Statute of Limitations from enforcing and collecting the special tax and assessment against the property and on the lots and parcels of land fronting on the street, highway and alley along which said improvements were made, and from collecting the amounts of such assessment, personally, from the owner or owners of the lots and lands at the time of the making of said assessment, and this plaintiff has been, and therefore is, prevented from obtaining payment of the said warrant out of said fund by the

failure, neglect, fault, refusal and fraud of the defendant, without any failure, neglect, fault, refusal or fraud of this plaintiff or his assignors.

For a second cause of action against defendant, plaintiff alleges:

I.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action each and every allegation of the first and second and third paragraph of the first cause of action herein.

II.

That the said Charles O'Brien duly performed each and all of the conditions and provisions of said agreement, as was required of him, and that on or about the 5th day of April, 1890, the said defendant duly made and delivered to the said Charles O'Brien, in part payment for the work and labor performed by him, and materials furnished by [28] him, under said contract, a warrant, which is substantially in the words and figures following, to wit:

"No. 83.

City of Port Townsend, April 5th, A. D. 1890.

By Order of City Council of April 4, A. D. 1890.

The Treasurer of the City of Port Townsend, Washington Territory:

Pay to Charles O'Brien, or order, Four hundred and ninety-one and 65/100 Dollars, and charge the same to the account of Monroe Street (Fill and Grade) Fund, being March. 90 estimate for 26,221 feet of cribbing. The City of Port Townsend



guarantees the principal with interest at ten per cent per annum.

J. A. KUHN,  
Mayor of the City of Port Townsend.

Attest: DEL CARY SMITH,  
City Clerk.

\$491.65.

[Endorsements]: Presented for payment April 5', 1890, and not paid for want of funds.

WALTER BOWEN,  
City Treas.

Sept. 10/91. Received on principal...\$245.83  
" " Interest.... 35.16

FIRST NAT'L BANK.  
SLOCUM.

CHARLES O'BRIEN.

Subscribed and sworn to before me, this 17th day of April, 1890.

[Notarial Seal] DEL CARY SMITH,  
Notary Public."

### III.

That afterwards, to wit, on or about the 5th day of April, A. D. 1890, the said warrant was, for value received, endorsed to this plaintiff, and plaintiff is now the owner and holder thereof, and that on the 10th day of September, 1891, the said defendant paid the sum of two hundred and forty-five dollars and 83/100, on account of the principal of said warrant, and on said day paid the further sum of \$35.16, interest thereon to that date, and no further or other payments have ever been made, and there is now

due and owing this plaintiff thereon, the sum of \$245.83, with interest thereon at the rate of ten per cent per annum from September 10th, 1891. [29]

## IV.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action, each and every allegation of the sixth and seventh paragraphs of the first cause of action herein.

For a third cause of action against defendant, plaintiff alleges:

## I.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action each and every allegation of the first and second paragraphs of the first cause of action herein.

## II.

That on or about the 26th day of February, 1890, the said defendant, the City of Port Townsend, duly made and entered into an agreement with one Charles O'Brien, for the filling and grading of Monroe Street, from Washington to Lawrence Street, in said City of Port Townsend, the said defendant agreeing to make and deliver to the said L. H. Cays warrants upon the Treasurer of said city, payable to the order of said Charles O'Brien, for the amount due and payable to him, for the work and labor done and materials supplied by him, under and by virtue of said contract, said warrants to be drawn upon, and to be paid out of the special fund, to be known as the Monroe Street (Fill and Grade) Fund, which said fund the said City of Port Townsend agreed to provide and create according to law.

III.

That the said Charles O'Brien duly performed each and all of the conditions and provisions of said agreement, as was required of him, and that on or about the 5th day of April, 1890, the said defendant duly made and delivered to the said Charles O'Brien, in part payment for the work and labor performed by him, and materials furnished by him under said contract, a warrant, which is substantially in the words and figures following, to wit:

“No. 34.

City of Port Townsend, April 5, A. D. 1890. [30]

By Order of City Council of April 4, A. D. 1890.

The Treasurer of the City of Port Townsend, Washington Territory:

Pay to Charles O'Brien, or order, Fifteen Hundred Dollars, and charge the same to the account of Monroe Street (Fill and Grade) Fund, Washington to Lawrence Street, being Mch 90 estimate to be deducted from final estimate. The City of Port Townsend guarantees the principal with interest at ten per cent per annum.

J. A. KUHN,

Mayor of the City of Port Townsend.

Attest: DEL CARY SMITH,

City Clerk.

\$1,500.00.

[Endorsements]: Presented for payment April 5", 1890, and not paid for want of funds.

WALTER BOWEN,

City Treas.

Sept. 10/91. Received on principal. . . . 750.00

“ “ Interest. . . . 107.29

FIRST NATIONAL BANK,  
SLOCUM.

CHARLES O'BRIEN, D. C. S.

Subscribed and sworn to before me this 17th day  
of April, 1890.

[Notarial Seal]

DEL CARY SMITH,  
Notary Public.”

#### IV.

That afterwards, to wit, on or about the 5th day of April, 1890, the said warrant was, for value received, endorsed to this plaintiff, and plaintiff is now the owner and holder thereof. That on the 10th day of September, 1891, the said defendant paid the sum of seven hundred and fifty dollars on account of the principal of said warrant, and on said day paid the further sum of one hundred and seven and 29/100 dollars, interest thereon to that date, and no other or further payments have ever been made thereon, although often demanded, and there is now due and owing to plaintiff the sum of \$750.00 with interest thereon at the rate of ten per cent per annum, from the 10th day of September, 1891. [31]

#### V.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action, each and every allegation of paragraphs six and seven, of the first cause of action herein.

For a fourth cause of action against defendant, plaintiff alleges:

I.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action, each and every allegation of paragraphs one and two of its first cause of action herein.

II.

That on or about August 30th, 1889, the said defendant duly made and entered into an agreement with Fred M. Terry and John McDougall, for the improving of Adams Street, in said City of Port Townsend, and by which said agreement the said defendant agreed to make and deliver to the said Fred M. Terry and John McDougall warrants upon the Treasurer of said city, payable to the order of said Fred M. Terry and John McDougall for the amount due and payable to them for the work and labor performed *done* and materials furnished by him under and by virtue of said contract, said warrants to be drawn upon, and to be paid out of the special fund, to be known as the Adams Street Improvement Fund, which said fund the said City of Port Townsend agreed to provide and create according to law.

III.

That the said Fred M. Terry and John McDougall duly performed each and all of the conditions and provisions of said agreement, as was required of them, and that on or about the 5th day of April, A. D. 1890, the said defendant duly made and delivered to the said John McDougall, one of said contractors, Fred M. Terry and John McDougall, in part payment for the work and labor performed by

him, and materials furnished by him under said contract, a warrant which is substantially in the words and figures following, to wit: [32]

“No. 85.

City of Port Townsend, April 5, A. D. 1890.

By Order of the City Council of April 4, A. D. 1890.  
The Treasurer of the City of Port Townsend, Washington Territory:

Pay to John McDougall, or order, Twenty Hundred and Sixty and 85/100 Dollars and charge the same to the account of Adams Street Imp.: Cribbing estimate of Apr. for Mch. work—for 24,980, for said street. The city guarantees the principal and interest on the same at ten per cent per annum.

J. A. KUHN,

Mayor of the City of Port Townsend.

Attest: DL CARY SMITH,  
City Clerk.

\$2,060.85.

[Endorsements:] Presented for payment April 8,” 1890, and not paid for want of funds.

WALTER BOWEN,  
City Treas.

JOHN McDOUGALL.

Identified W. J. McKEON.

I hereby certify that the above is the true signature of Walter Bowen, City Treasurer of Port Townsend.

April 8/90.

W. F. FENIMORE,

Clerk of the Superior Court of Jefferson County.”

IV.

That afterwards, to wit, on or about the 8th day of April, 1890, the said warrant was, for value received, endorsed to this plaintiff, and this plaintiff is now the owner and holder thereof, and that there is now due and owing to this plaintiff thereon the sum of \$2,060.85, with interest thereon at the rate of ten per cent per annum from April 8th, 1890.

V.

Plaintiff here repeats, reiterates, adopts and makes part of this cause of action each and every allegation of the sixth and seventh paragraphs of its first cause of action herein.

For a fifth cause of action against defendant, plaintiff alleges: [33]

I.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action, each and every allegation contained in paragraphs one and two of the first cause of action herein.

II.

That on or about the 28th day of December, 1889, the said defendant, the City of Port Townsend, duly made and entered into an agreement with one W. C. Williams, for the grading of Jefferson Street, from Jackson to Walker Streets, in said City of Port Townsend, and by which said agreement the defendant agreed to make and deliver to the said W. C. Williams, warrants upon the Treasurer of said city, payable to the order of said W. C. Williams, for the amount due and payable to him, for the work and labor done and materials supplied by him under and

by virtue of said contract, said warrants to be drawn upon and to be paid out of the special fund, to be known as the Jefferson Street Grade Fund, which said fund the said City of Port Townsend agreed to provide and create according to law.

### III.

That the said W. C. Williams duly performed each and all of the conditions and provisions of said agreement, and that on or about the 10th day of May, 1890, the said defendant duly made and delivered to the said W. C. Williams, in part payment for the work and labor performed by him, and the materials furnished by him under said contract, a warrant which is substantially in the words and figures following, to wit:

“No. 97.

City of Port Townsend, May 10, A. D. 1890.

By Order of City Council of May 9, A. D. 1890.

The Treasurer of the City of Port Townsend, Washington Territory:

Pay to W. C. Williams, or order, Two Thousand Eight Hundred and Twelve and 50/100 Dollars and charge the same to the account of Jefferson Street Grade Fund—From Jackson to Walker Street—75% of [34] 30,000 yds. fill. The City of Port-Townsend guarantees the interest on this warrant at ten per cent per annum.

J. A. KUHN,

Mayor of the City of Port Townsend.

Attest: DEL CARY SMITH,

City Clerk.



[Endorsements]: Presented for payment May 10," 1890, and not paid for want of funds.

WALTER BOWEN,  
City Treas.

Recd, Port Townsend, Wash., Apl. 15," 1891.—  
Two hundred and forty-five Dolls, (\$245.00) on the  
within.

D. M. SLOCUM,  
Asst. Cashier First N. Bank.

W. C. WILLIAMS."

#### IV.

That afterwards, to wit, on or about the 10th day of May, 1890, the said warrant was, for value received, endorsed to this plaintiff and plaintiff is now the owner and holder thereof, and that on the 15th day of April, 1891, the said defendant paid on said warrant the sum of \$245.00, and there is now due and owing this plaintiff the sum of \$2829.16 with interest thereon at the rate of ten per cent per annum from the 15th day of April, 1891.

#### V.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action each and every allegation of the sixth and seventh paragraphs of its first cause of action herein.

For a sixth cause of action herein against defendant, plaintiff alleges:

#### I.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action, each and every allegation contained in the first and second paragraphs of its first cause of action herein.

## II.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action, each and every allegation contained in paragraph II of its fifth cause of action herein. [35]

## III.

That the said W. C. Williams duly performed each and all of the conditions and provisions of the said agreement, as was required of him, and that on or about the 10th day of February, May, 1890, the said defendant duly made and delivered to the said W. C. Williams, in part payment for the work and labor performed by him, and materials furnished by him under said contract, a warrant, which is substantially in the words and figures following, to wit:

“No. 98.

City of Port Townsend, May 10, A. D. 1890.

By Order of City Council of May 9, A. D. 1890.

The Treasurer of the City of Port Townsend, Washington Territory:

Pay to W. C. Williams, or order, Two thousand Dollars and charge the same to the account of Jefferson Street Grade Fund, Jackson to Walker, being estimate of May 9-90. The City of Port Townsend guarantees the interest on *the* this warrant at ten per cent per annum.

J. A. KUHN,

Mayor of the City of Port Townsend.

Attest: DEL CARY SMITH,

City Clerk.

\$2000.00.

[Endorsements]: Presented for payment May 10," 1890, and not paid for want of funds.

WALTER BOWEN,  
City Treas.

W. C. WILLIAMS."

IV.

That afterwards, to wit, on or about the 10th day of May, 1890, the said warrant was, for value received, endorsed to this plaintiff, and plaintiff is now the owner and holder thereof, and there is now due and owing the plaintiff thereon the sum of \$2000.00 with interest thereon at the rate of ten per cent from the 10th day of May, 1890.

V.

Plaintiff here repeats, reiterates, adopts and makes part of this cause of action each and every allegation contained in the sixth and seventh paragraphs of the first cause of action herein.

For a seventh cause of action against defendant plaintiff alleges: [36]

I.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action each and every allegation contained in the first and second paragraphs of the first cause of action herein.

II.

That on or about the 28th day of December, 1890, the said defendant, the City of Port Townsend, duly made and entered into an agreement with one W. C. Williams for the grading and filling of Jefferson Street in said City of Port Townsend, and by which said agreement the defendant agreed to make and

deliver to said W. C. Williams, warrants upon the Treasurer of said city, payable to the order of said W. C. Williams, for the amount due and payable to the said W. C. Williams, for the work and labor done and materials furnished by him under said contract, said warrants to be drawn upon and to be paid out of the special Fund to be known as the Jefferson Street Grade Fund, which said fund, the said City of Port Townsend agreed to provide and create according to law.

### III.

That the said W. C. Williams duly performed each and all of the conditions and provisions of said agreement, as was required of him, and that on or about the 10th day of May, 1890, the said defendant duly made and delivered to the said W. C. Williams, in part payment for the work and labor performed by him and materials furnished by him under said contract, a warrant, which is substantially in the words and figures following, to wit:

“No. 99.

City of Port Townsend, May 10, 1890.

By Order of City Council of May 9, A. D. 1890.

To the Treasurer of the City of Port Townsend,  
Washington Territory:

Pay to W. C. Williams, or order, Two thousand six hundred and twenty-seven and 00/100 Dollars, and charge the same to the account of Jefferson Street Grade Fund, being 30,847 yds. fill on said street  $\frac{3}{4}$  of [37] same for May 9-90. The City of Port Townsend guarantees the interest on this war-

rant at ten per cent per annum.

J. A. KUHN,  
Mayor of the City of Port Townsend.  
Attest: DEL CARY SMITH,  
City Clerk.

\$2627.00.

[Endorsements]: Presented for payment May 10," 1890, and not paid for want of funds.

WALTER BOWEN,  
City Treas.

W. C. WILLIAMS."

#### IV.

That afterwards, to wit, on or about the 10th day of May, 1890, the said warrant was, for value received, endorsed to this plaintiff, and plaintiff is now the owner and holder thereof, and that there is now due and owing the plaintiff thereon the sum of two thousand six hundred and twenty-seven (\$2627.00) dollars with interest thereon at the rate of ten per cent per annum from the 10th day of May, A. D. 1890.

#### V.

Plaintiff hereby repeats, reiterates, adopts and makes part of this cause of action each and every allegation of the sixth and seventh paragraphs of the first cause of action herein.

WHEREFORE Plaintiff prays judgment against the said defendant as follows:

On the first cause of action herein in the sum of \$245.82, with interest thereon at ten per cent per annum from September 10, 1891.

On the second cause of action herein, in the sum of \$245.82, with interest at ten per cent per annum from September 10th, 1891.

On the third cause of action herein, in the sum of \$750.00 with interest at the rate of ten per cent per annum from September 10th, 1891.

On the fourth cause of action herein, in the sum of \$2,060.85 with interest at ten per cent per annum from April 8th, 1890. [38]

On the fifth cause of action herein, in the sum of \$2829.16, with interest at the rate of ten per cent per annum from April 15, 1891.

On the sixth cause of action herein, in the sum of \$2,000.00 with interest at ten per cent per annum from May 10th, 1890.

On the seventh cause of action herein in the sum of \$2627.00, with interest at ten per cent per annum from May 10th, 1890.

Altogether in the sum of \$10,758.65, with interest as aforesaid, and for its costs and disbursements herein, and for such other and further relief as may be just and equitable.

MORRIS B. SACHS,

Plaintiff's Attorney. [39]

3. That the warrants described in plaintiff's complaint as numbered, respectively, 49, 60, 100, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158 and 159, drawn on the Indebtedness Fund of said city were ordered by the City Council of said city on the 17th day of February, 1898, and were issued on February 18, 1898, in satisfaction of a judgment rendered against the City of Port Townsend on February 5,

1898, in cause No. 1538 of the Superior Court of the State of Washington for the County of Jefferson, wherein The Manchester Savings Bank was plaintiff and the City of Port Townsend was defendant; that the said judgment was so rendered against the said city upon the complaint in said action and upon the findings of fact substantially following the said complaint, except as hereinafter stated, and a true and correct copy of the said complaint upon which said judgment was so rendered is as follows: [40]

*In the Superior Court of the State of Washington,  
for the County of Jefferson.*

THE MANCHESTER SAVINGS BANK, a Corporation,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND, a Municipal Corporation,

Defendant.

### COMPLAINT.

To the Hon. R. A. BALLINGER, Judge of the Above-entitled Court:

Comes now the above-named plaintiff, and complaining of the defendant, for a first cause of action against said defendant alleges:

#### I.

That plaintiff, the Manchester Savings Bank, is and at the several times hereinafter mentioned was a banking corporation organized and existing under the laws of the State of New Hampshire.

## 2.

That the City of Port Townsend is a municipal corporation duly incorporated and created under an act of the Legislative Assembly of the Territory of Washington, entitled "An act to incorporate the City of Port Townsend," approved Nov. 28, 1881, and the act of the Legislative Assembly of the Territory of Washington entitled "An Act to amend an act entitled 'An Act to incorporate the City of Port Townsend'" approved November 28, 1881, which said last act was approved November 28, 1883.

## 3.

That in and by section 2 of this act of incorporation, it was and is provided that the said defendant may sue and be sued and may contract and be contracted with, and in and by section 7 of said act of incorporation the said defendant was and is among other things endowed with and given power to provide for the clearing, opening, gravelling, improving and repairing of streets, highways and alleys and for the prevention and removal of all obstructions therefrom, or [41] from any cross or sidewalk and for such purposes was and is given power to assess, levy and collect each year, a road poll tax of not less than four dollars, nor more than six dollars, of every male inhabitant of said city between the ages of twenty-one and fifty years, except persons that are a public charge and also a special tax on property that is within said City of Port Townsend of not less than two or more than four mills of every dollar's worth of said property, which said tax should be expended



for the purposes specified in said section; and in addition thereto in constructing and repairing sidewalks, and in curbing, paving, grading, macadamizing and guttering any street, highway or alley therein, by section 8 of said act power is given to said defendant to levy and collect a special tax or assessment on the lots or parcels of land fronting on said highway or lots, sufficient to pay the expense of such improvement, provided that unless the owners of more than one-half the property subject to assessment for such improvement petition the Common Council of said defendant to make the same, such improvement shall not be made until at least five members of the Common Council by vote assent to the making of the same.

4.

That on the 31st day of April, 1885, said Common Council of said defendant, City of Port Townsend, duly ordained and passed the following ordinance, entitled "An Ordinance to provide for contracts for street improvements," being ordinance No. 117, which ordinance was on the fourth day of April, 1885, duly approved by the Mayor of said city and is still in force; which said ordinance is as follows, to wit:

Ordinance No. 117.

To provide for contracts for street improvements.

The City of Port Townsend does ordain as follows:

Section 1. That within twenty days after the passage of any ordinance for curbing, paving, grading, filling, macadamizing or guttering [42] any street, highway or alley in the City of Port Town-

send, or for the construction or repair of any sidewalk in any such street, highway or alley, the City Surveyor shall prepare and submit to the Common Council, all necessary plans, specifications and estimates for such improvements, and such plans, specifications and estimates, when approved by said Council shall be filed with the City Clerk.

Sec. 2. That within three days after the filing of such plans, specifications and estimates, the clerk shall advertise a notice calling for sealed bids for such improvements to be made according to such plans, specifications and estimates. Such notice shall be published for five days, successively, in any newspaper published in the city. All bids must be filed in the office of the Clerk on or prior to a day to be specified in such notice, and the Clerk shall endorse on the envelope or cover of each bid the date of filing the same; and he shall receive no bid after the day specified in such notice for receiving the same. Provided, that if no bid shall be received and accepted by the Council in response to such notice, the Clerk shall immediately readvertise a similar notice, and he shall so advertise as many times as may be necessary, or until a contract shall be awarded for such improvement, unless otherwise ordered by the Council, and shall receive bids in the same manner and subject to all the provisions of this ordinance, as in the case of the original call for bids.

Sec. 3. That at the first meeting of the Council after the time specified in any notice for bids, the Council shall open and consider all bids received,

and may reject any and all, or may accept that of the lowest responsible bidder or bidders, and award a contract thereon. And the Council may, if deemed advisable, at the times of awarding any contract under the provisions of this ordinance, require the contractor or contractors to give a bond to the City of Port Townsend in any sum to be specified, with sufficient sureties, to be approved [43] by the Mayor, conditioned for the faithful execution of the terms of the contract.

Sec. 4. That when any bid shall have been accepted by the Council, and a contract awarded thereon, such contract shall be reduced to writing and signed by the contractor or contractors, and by the Mayor and Clerk in behalf of the City, and sealed with the corporate seal of the City in duplicate, and one of the originals of such contract shall be filed with the Clerk, and authority to sign such contract on behalf of the City is hereby conferred upon the Mayor and Clerk.

Sec. 5. That this ordinance shall take effect and be in force at and after 5 days after the same shall have been published.

Passed the Council April 3, 1885.

Approved April 4, 1885.

C. M. BRADSHAW,  
Mayor.

J. J. CALHOUN,  
City Clerk.

5.

That on the 4th day of March, 1887, the Common Council of said defendant, City of Port Townsend,

duly ordained and passed the following ordinance, entitled "An ordinance prescribing the mode in which the charge on the respective owners of lots and lands shall be assessed and collected, determined for street improvements," the same being ordinance No. 160; which said ordinance reads as follows:

Ordinance No. 160.

An ordinance prescribing the mode in which the charge of the respective owners of lots or lands, or on the lots or lands shall be assessed, determined and collected for street improvements.

The City of Port Townsend does ordain as follows:

Section 1. That whenever the Common Council of the City of Port Townsend shall cause any part of any street, highway or alley therein to be curbed, paved, graded, macadamized or guttered, or cause any [44] sidewalks to be constructed or repaired in any street, highway or alley in said City, the whole cost of such improvement shall be levied and become a lien upon the taxable real estate fronting on such street or alley as may be improved, and as may be without any assessment district, established as hereinafter provided; provided, that if the City Council, at any one time, cause two or more intersecting streets to be so improved, the cost of so improving the area of the intersections shall be equally divided between the property fronting on each of said intersecting streets.

Sec. 2. That all assessments for such improvements shall be according to value, so that each lot or other smallest subdivision of real estate sub-

ject to assessment, shall be held for such portion of the whole cost of the improvement within any assessment district, as the value of such lot or smallest subdivision of real estate bears to the aggregate value of the assessable property within said assessment district. And as fixing values, all improvements upon real estate shall be excluded, and the lands only shall be assessed; and the costs of any such improvement shall include all lawful charges and expenses incident to such improvement, and making and collecting the assessment therefor.

Sec. 3. That the property fronting on any such improvement and subject to assessment therefor, shall constitute a special assessment district, and the boundaries of such assessment district shall be lines running parallel with the street to be improved through the middle of the tier of blocks fronting on such street, each side of the same; and in case the land so fronting is not parallel into blocks, then such line shall run parallel with the street so improved at a distance of 110 feet from the boundary line between such street and the property abutting them, and such lines shall close with lines at right angles with such street across each terminus of the improvement. Provided, if the Council shall, at any one time, cause two or [45] more streets to be improved, districts shall nevertheless be formed with boundaries as herein provided, so that a separate district shall be formed for such street so improved. Provided, further, that when any street or any part thereof, shall be

ordered improved, and such improvement is not to be of uniform character along the whole line of such improvement, then such improvement shall be divided into separate assessment districts, so that each assessment district shall include only improvements of uniform character as near as may be.

This provision shall apply to the grading or other improvement of the roadbed of the street, and sidewalks, or to both, as the case may be, as that separate distance may be found for each kind of improvement, if deemed advisable by the Council. In case more than one assessment district shall be required as above provided, or in any case, the Council shall deem it advisable to make separate districts for the different kinds of improvements, the length and nature of each assessment district shall be fixed by an order of the Council at the time of equalizing the assessment, as provided by section 6 of this ordinance.

Sec. 4. That within twenty days after the council shall have passed an ordinance for such improvement of any street, highway or alley, the City Surveyor shall prepare and file with the Clerk a plat of the street or streets so to be improved, and of the real estate subject to assessment therefor, showing the lines of each lot or other smallest subdivision thereof; and within ten days thereafter, the City Assessor shall prepare and file with the Clerk an assessment-roll for the district, or an assessment-roll for each of said assessment districts, if several streets are to be improved at the same time, upon which assessment-roll each lot or other smallest

subdivision of real estate in such district shall be listed in the name of the owner thereof, if known, or as "unknown" and assessed at the actual cash value thereof and such assessment-roll shall be open for public inspection [46] at the Clerk's office, from the filing thereof until the day of meeting of Council or equalization thereof, as herein provided.

Sec. 5. That within three days of the filing of such assessment-roll, the Clerk shall advertise a notice in some newspaper published in the city, to the effect that such assessment-roll (describing it) has been filed in his office, and that the same is open to public inspection and that any person feeling himself aggrieved by such assessment may apply to the Common Council to have the same corrected at a meeting of the Council to be designated in such notice, which meeting shall be the first regular meeting after the last publication of such notice, and such notice shall be published for ten days in successive issues of said newspaper.

Sec. 6. That at the first regular meeting of the Common Council after the last publication of such notice, the common Council shall equalize such assessment and shall hear all complaints concerning such assessment-roll and determine the same, and may raise or lower the valuation of any lot or parcel of real estate listed on such assessment-roll, so as to make the assessment equal and uniform, as near as may be, upon all property in the district, and shall, if any lot or parcel of real estate in such district be found to have been omitted from such

assessment-roll list the same and place a just valuation thereon. Provided, that valuation of any lot or parcel of real estate shall not be raised by the Council without the owner's consent, until at least twenty-four hours after a written notice of such proposed change shall have been served upon the owner or his agent, if such owner or agent can be found within the city, if not so found, then a notice of such proposed change in the assessment-roll must be published for at least three days in some newspaper published in the city, and the Council may adjourn from time to time if necessary, until the regulation of such assessment-roll is completed.

[47]

Sec. 7. That as soon as practicable after such assessment shall be equalized, and the nature and extent of assessment districts shall have been fixed, and the cost of the improvement shall have been ascertained, the Council shall by an order, fix the rate of assessment for such district, or for each of such districts, as the case may be, so as to raise the necessary amount to pay for such improvement, in accordance with the provisions of this ordinance.

Sec. 8. That within ten days after the Council shall have so fixed the rate of assessment for any district, the clerk shall extend upon the assessment-roll for the same amount of the assessment upon each lot or parcel of real estate listed thereon, and prepare a duplicate of such assessment-roll and deliver the same to the City Treasurer, who shall, within three days thereafter, publish a notice in some newspaper published in the city, to the effect



that all assessments upon such roll must be paid to him within thirty days after the first publication of such notice, or the same will become delinquent. Such notice shall be published for three days.

Sec. 9. That all assessments shall be collected by the Treasurer, and if not collected within the time prescribed in the preceding section, the same shall then become delinquent, and the same, with interest, penalty and costs, shall be collected by suit in foreclosure of the lien for the same in accordance with the provisions of the charter of the city.

Sec. 10. That this ordinance shall take effect and be in force at and after five days after the same shall have been published.

Passed the Council March 4, 1887.

Approved March 4, 1887.

D. W. SMITH,  
Mayor.

6.

That on or about the 31st day of August, 1888, the Common Council of said defendant, by a vote of five members of said council voting [48] in the affirmative, duly determined to make improvement of that part of Washington Street, between Taylor and Harrison Streets, and for that purpose duly ordained and passed the following ordinances number 212 which said ordinance was duly passed on the 31st day of August, 1888, on which passage five members of said Common Council voted in the affirmative therefor; that said ordinance was duly approved by the Mayor of said city and is still in force; said ordinance is entitled "An ordinance for grad-

ing portions of Washington street'' and is as follows:

Ordinance No. 212.

The City of Port Townsend.

The City of Port Townsend does ordain as follows:

Section 1. That Washington Street from the easterly side of Taylor Street to the easterly side of Harrison Street be graded to the grade of said Washington Street as established by ordinance No. 201.

Sec. 2. That all lots and parcels of land fronting on said Washington Street as herein ordained, viz.: from the easterly side of Taylor Street to the easterly side of Harrison Street be, and the same is hereby declared to be, an assessment district for the purpose of this ordinance.

Sec. 3. This ordinance to take effect and be in force from and after five days from its publication.

Passed the Council Aug. 31, 1888.

Approved Aug. 31, 1888.

W. H. H. LEARNED,

Mayor.

Attest: JAMES SEAVY,  
City Clerk.

7.

That pursuant to said ordinance No. 117 heretofore pleaded, the City Surveyor of said defendant duly prepared and submitted to the Common Council all necessary plans and specifications and estimates [49] for said improvement, and the same were duly approved by said Common Council

and filed with the City Clerk of said defendant.

8.

That immediately after the filing of such plans, specifications and estimates, pursuant to the provisions of said ordinance No. 117, the Clerk of said defendant duly advertised, calling for sealed bids for the making of such improvements according to such plans, specifications and estimates, and caused said notice to be duly published for the time and in the manner in said ordinance No. 117 provided.

9.

That within the time in said notice provided, one W. C. Williams, agreeably to the provisions of said ordinance No. 117, did submit in writing his bid for the making of said improvement and afterwards the Common Council of said defendant accepted the bid of said W. C. Williams as the lowest responsible bidder and awarded him the contract thereon; and thereafter and in pursuance of said acceptance, the said W. C. Williams duly entered into a contract in writing, signed by the said W. C. Williams and by the Mayor and Clerk of said City of Port Townsend in behalf of said city, under the corporate seal of said city, in duplicate, which contract is as follows:

This agreement made and entered into this 15th day of October, 1888, by and between the municipal corporation, the City of Port Townsend, the party of the first part and W. C. Williams of Seattle, W. T'y, the party of the second part,

Witnesseth that whereas the said party of the first part, by order and resolution duly passed by

its Common Council at a regular session thereof held on the 21st day of September, 1888, did invite and call for bids and proposals to do certain work on Washington Street in said city, which is more fully described hereinafter, and whereas the said city by its Common Council did, on the 1st day of [50] October, 1888, at a regular session of said Council, accept the bid for said work duly and regularly offered and filed by said party of the second part, he being the lowest responsible bidder for said work and

Whereas the said City, through its said Council, thereupon and thereafter duly authorized a contract to be entered into between said city and said second party for the doing of said work and instructed the Mayor and Clerk to sign and execute said contract on the part of said city.

Now, therefore, it is hereby agreed by and between the said parties hereto, that said party of the second part, for the consideration hereinafter named, agrees that he will do the work of grading Washington Street in said city from the easterly side of Taylor to east side of Harrison streets in said city according to the plans and specifications made by the City Surveyor and accepted by the party of the first part and now on file with the clerk of said first party.

It being expressly agreed, understood and covenanted, that the bulk heading set forth in said plans and specifications is considered as, treated as, and is a part of the grading of said street and that said bulkheading is to be as in said plans and

specifications set forth, and it is hereby agreed that the specifications and plans hereinbefore referred to are made part of and are a part and parcel of this agreement.

And it is hereby agreed by said second party to do said work of grading, including bulkheading, in a good workmanlike manner and according to plans and specifications aforesaid and to the satisfaction of said party of the first part, its Common Council and the committee on streets of said first party. And the said work of grading, including bulkheading, to be fully done and completed within seventy (70) days from the date of the execution of this contract. And the said party of the first part agrees to pay to the said second party, and the said party of the second part agrees to accept as compensation [51] therefor, at the rate of forty-nine (49) cents per cubic yard of earth in all excavations completing said grade from east side of Taylor to the east side of Harrison Street and for cribbing and bulkheading, seventeen and seventy-five one-hundredths dollars (17.75) per thousand feet for all lumber used in bulkheading or cribbing. Warrants or orders of said city, drawn upon the Washington Street improvement Fund as follows: At the first regular meeting of the Common Council in the month of December, A. D. 1888, seventy-five (75) per cent of the contract price for such portion of the work as the city surveyor and committee on streets shall certify to have been completed up to December 1st, 1888, and for the balance of said contract price at the first

regular meeting of the Council after the completion of said improvement and approved by said surveyor and said Council.

In witness whereof said party of the first part has caused these presents to be signed by its Mayor and Clerk and sealed with its seal this — day of October, A. D. 1888.

W. H. H. LEARNED, (Seal)  
Mayor.

JAMES SEAVEY, (Seal)  
Clerk.

W. C. WILLIAMS. (Seal)

Signed, sealed in presence of:

[Corporate Seal] W. F. LEARNED.

GEO. H. JONES,

H. H. AMES,

CHAS. K. JENNER,

As to W. C. Williams.

And the said W. C. Williams fully complied with the requirements of said ordinance No. 117 in regard to such contracts; and did, in pursuance of the requirements of said Common Council duly execute and deliver his bond to said defendant, City of Port Townsend, in the sum of \$—, conditioned for the faithful execution of the terms of said contract, which said bond was duly approved by the mayor of said defendant, City of Port Townsend. [52]

10.

That in pursuance of said contract, the said W. C. Williams at once entered upon the execution thereof, and completed said improvement and fully complied with all the terms and conditions of said contract

under the supervision of the Street Committee and City Surveyor of said defendant; and that afterwards the said defendant and the said W. C. Williams met together and had a settlement for and concerning the work done under the said contract, and said defendant by its proper officers and agents duly accepted said work, and said defendant according to the terms of said contract, issued among others the following warrants, drawn on the Washington Street Improvement Fund, to wit:

Warrant No. 15, for the sum of . . . \$1000.00.

Warrant No. 16, for the sum of . . . \$1000.00.

Warrant No. 17, for the sum of . . . \$1000.00.

Warrant No. 18, for the sum of . . . \$1000.00.

Warrant No. 21, for the sum of . . . \$1034.48.

All of said warrants being dated February 11th, 1889, payable to W. C. Williams, or order, and signed by W. H. H. Learned, Mayor, and attested by James Seavey, Clerk of said defendant City, for and in behalf of said city; that all of said warrants were, on said 11th day of February, 1889, presented to the Treasurer of said defendant, City of Port Townsend, and payment thereof demanded, and such payment was refused for want of funds to make payment of the same, and said Treasurer endorsed on said warrants at such presentation "Presented this 11th day of February, A. D. 1889, and not paid for want of funds, C. M. Bradshaw, City Treasurer."

11.

That no part of said warrants has been paid except the interest up to the 11th day of August, 1892. [53]

## 13.

That the said contract above set forth, in so far as represented by the above-described warrants, and in the proportion that the above-described warrants bear to the whole amount issued on said Washington Street Improvement Fund, as well as each and all of said warrants above set forth and claims thereunder, was duly assigned for value to this plaintiff and that said plaintiff is now the owner and holder thereof.

## 13.

That at diverse and sundry times since the said warrants were first presented for payment, and payment thereof refused by the said defendant, the said defendant has been requested by plaintiff and its said assignor to provide a fund for the payment of said warrant, which it has at all times neglected and refused to do.

## 14.

That under and by virtue of ordinances No. 160 and 212, heretofore set forth, said defendant constituted a special assessment district, consisting of the property fronting on said improvement and established boundaries of such district embracing the property abutting on said improvement portion of said Washington Street, and pretended to file a plat of said street so to be improved and the real estate subject to assessment therefor, and in part complied with the provisions of said ordinance for assessing the costs of said improvement upon the property embraced within said improvement district; but though often requested by the plaintiff so to do, the



said defendant, has at all times, failed, neglected and refused and still does wholly fail, neglect and refuse to comply with the provisions of said ordinance No. 160 to assess the amount of said improvement, or cause the same to be extended upon the assessment-roll, deliver the same to the Treasurer of said city, or take any steps whatever for the due and legal assessment of said property, or the collection of the amount [54] of said improvement as by said ordinance provided; that plaintiff has repeatedly applied to said defendant and to its Mayor and Common Council, to make assessment and collection of the amount of said indebtedness, but that said defendant, its Mayor and Common Council, have, at all times, wholly neglected and refused to take any steps or to make any provision for the payment of said indebtedness or for the collection of the same from the owners of the property fronting on said improvement, and said defendant refuses to take any steps toward the collection of said money or the payment of said warrant, or any part thereof, and there is no money whatever in said fund for the payment of said warrant or any part thereof, and said defendant has wholly failed, neglected and refused to comply with any of the provisions, terms and agreements of the said contract or said ordinance.

15.

That since the date of entering into said contract, and the making of said improvement by said W. C. Williams, the property adjoining on said street fronting said improvement has greatly lessened in value, and has in many instances, become subject to

liens for delinquent taxes and has been sold and encumbered by the different owners thereof; and that by reason of said defendant failing to comply with the provisions of said ordinance No. 160, in making due assessment of the cost of said improvement upon the property fronting upon the same, and by reason of its neglect and failure to properly make assessment of the amount of said improvement and to collect the same, the means of the payment of the cost of said improvement under and by virtue of section 8 of the charter of said defendant, heretofore pleaded, and of said ordinance No. 160 enacted in pursuance thereof, have been wholly lost to plaintiff and its assignor, and said plaintiff and its assignor have at all times used due diligence in demanding the collection of said assessment of defendant, and are without fault in the premises. [55]

## 16.

That for the purpose of inducing the said W. C. Williams and his assignees to rely upon its good faith in the said premises, and upon its purpose to make payment for said improvement, and to induce the said W. C. Williams to enter into said contract, and as an assurance that said assessment would be by defendant levied promptly and duly collected and paid, defendant, at the time of making said contract, offered to guarantee the payment of said warrants with interest thereon at the rate of ten per cent per annum, and did in pursuance of such representation so indicate and promise in said warrants; relying upon said representations and conduct on the part of the defendant, plaintiff and its assignor were led to

believe and did believe that defendant would cause such assessment to be duly and legally made, levied and collected and expended by defendant in payment of said warrants and the indebtedness evidenced thereby.

## 17.

That at no time prior to nor at the time of incurring the said indebtedness for said improvement, including the same, was the indebtedness of said defendant as large as and equal to one and one-half per cent of the value of the taxable property in said City of Port Townsend.

## 18.

That by reason of the negligence on the part of the said defendant for failure to make said assessment and the collection of the same from the property abutting upon the street so improved, and by reason of the failure of said defendant to carry out the provisions of said contract and providing a fund for the payment of said warrants and by reason of the facts heretofore set forth herein, the said plaintiff has been and is damaged in the amount represented by said warrants as being due thereon as follows, to wit:

[56]

The sum of \$5,034.48 with interest thereon at the rate of ten per cent per annum from the 11th day of August, 1892.

## 19.

That at all the times since the completion of said improvement on said street, said defendant has constantly used the said street and received full benefit of said improvement.

That on the 26th day of March, 1895, the said plaintiff duly presented its claim to the Mayor and Common Council, in regular session, for allowance and payment, and that the said defendant and its Mayor and Common Council have wholly refused to allow or pay the said claim or any part thereof, and the whole of said claim as above set forth is now due and owing to this plaintiff from said defendant.

Wherefore plaintiff demands judgment against said defendant for damages for the sum of Five Thousand Thirty-four and  $48/100$  Dollars with interest thereon at the rate of ten per cent per annum from the 11th day of August, 1892, and for plaintiff's costs and disbursements herein.

W. W. FELGER,  
DEL CARY SMITH, and  
STRUVE, ALLEN, HUGHES &  
McMICKEN,

Attys. for Plff.

State of Washington,  
County of Jefferson,—ss.

W. W. Felger, being first duly sworn, on oath deposes and says, that he is one of the attorneys for the plaintiff in the above-entitled action, that he makes this affidavit for and in behalf of said plaintiff as such attorney for the reason *the* that said plaintiff has no agent or officer in said county and state, that he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

W. W. FELGER. [57]

Subscribed and sworn to before me this 25th day of June, 1895.

U. D. GNAGEY,  
Notary Public. [58]

4. That while the complaint in said cause No. 1538 alleges, in paragraph fourteen thereof, that the city failed to make any assessment whatever, the amended answer of the defendant in said cause alleges that the assessment was duly made according to law and ordinances in force, that the same was duly equalized, extended upon the assessment-rolls, duplicate assessment-rolls, prepared and placed in the hands of the proper officer for collection, and the reply admitted such allegations, and the Court made the following among other findings, to wit:

“That said defendant, under and by virtue of the law and ordinances in force and applicable thereto, duly made and constituted an assessment district, immediately after the execution of said contract and prior to the completion thereof, consisting of the property fronting on said improvement and established boundaries of such district embracing the property abutting on said improvement portion of said Washington Street, and filed a plat of said street so to be improved and the real estate subject to assessment therefor and duly complied with all the requirements of the law and ordinances making a valid assessment of said property, and duly equalized the same and caused the same to be extended upon the assessment-roll, prepared duplicate assessment-rolls and placed the same in the hands of the proper officer for collection.”

41½. That the special assessments described and referred to in said causes numbered respectively 1258 and 1538 were duly and regularly made and a part of such assessments were collected by the proper officer and all moneys acknowledged in the complaints in said causes to have been paid on said street grade warrants sued on in said causes were collected from such special assessments and not otherwise. [59]

5. That before any of the actions hereinbefore mentioned were commenced in said Superior Court, there were outstanding street grade warrants drawn on special funds of local improvement districts in said City of Port Townsend amounting to about \$130,000, including the warrants sued on in said actions; that the said actions hereinbefore mentioned were commenced against said city and the said city was served with summons and complaint, and appeared in said actions by its officers and pretended to defend said suits, but in fact did not do so, but the said officers and the said City Council came to an understanding with the plaintiffs in said actions whereby the said [60] plaintiffs were allowed to prosecute their said actions to judgment without proper defense, and whereby the said City Council and the said city officers agreed with the said plaintiffs in said action and with the plaintiffs in other actions brought on like street grade warrants, and with all the holders of such street grade warrants outstanding as aforesaid, that they would not and that the City would not make any defense against the said actions and would not defend against nor appeal from any judgment that might be rendered

against the said City on such street grade warrants, and would allow all future actions on such street grade warrants to go by default and would not make any defense to future actions brought on such warrants; but would issue in lieu of judgments acquired in the said actions herein mentioned and in other actions then pending on such street grade warrants and in lieu of such default judgments, warrants drawn on the Indebtedness Fund of said city, bearing six per cent interest; that in pursuance of said understanding and agreement the warrants sued on herein together with all the other warrants mentioned in plaintiff's complaint together with a large amount of other warrants issued in lieu of default judgments, in all amounting to about the sum of \$100,000, were ordered and issued by the said City Council during the year 1898, and some of the said default judgments were rendered as late as December, 1898.

6. That afterwards and in January, 1899, while there were still outstanding street grade warrants of the kind and character hereinbefore described, and of the kind and character upon which the judgments in said causes numbered, respectively, 1258 and 1538 were rendered, in the sum of about \$30,000, which had not yet been reduced to judgment, the said City refused to recognize the said Indebtedness Fund warrants so issued as aforesaid as valid claims against the said City and refused to allow any more of the said street grade warrants to go to judgment; that such other street grade warrants not reduced to [61] judgment in the year 1898 are still outstanding and no action has ever been taken by the holders

thereof for collection; that the said City has ever since refused to recognize the said warrants so issued on said Indebtedness Fund as valid claims against the City, and all of the special levies made by said City for said Indebtedness Fund mentioned and described in said plaintiff's complaint, were so made and collected by said City for the purpose of paying off certain warrants drawn on the Fire and Water, Road, Light, and General Expense, Fund, of said City, which said warrants were outstanding and unpaid on February 1, 1898, and which by *and* act of the legislature of the State of Washington, entitled "An Act relating to the taxes and funds of municipal corporations having less than twenty thousand inhabitants, approved March 16, 1897," became legally payable out of said Indebtedness Fund from and after February 1, 1898.

7. That long before any of the said street grade warrants were reduced to judgment, long before the said City Council ordered any of the warrants mentioned and described in said complaint drawn on the said Indebtedness Fund and long before they were actually so drawn and long before the said City Council and the said city officers came to an understanding and an agreement with the said street grade warrant holders as hereinbefore alleged, and on July 9, 1897, the Supreme Court of the State of Washington, in the case of German American Savings Bank vs. The City of Spokane, reported in 17 Wash. at page 315, had decided that under no circumstances can a city be held liable on a street grade warrant



such as were involved in said causes numbered, respectively, 1258 and 1538 of the Superior Court, described in said complaint and the said City Council and the City Attorney of said City had full knowledge of said decision, and after and before the several judgments in the said causes Nos. 1258 and 1538 had been rendered and before the said Indebtedness Fund warrants sued on herein or any such Indebtedness Fund warrants [62] were ordered by said City Council and before any of the same were issued, and before the time for appeal from the judgments in said causes had expired, the said City Council was fully advised by other competent counsel than the City Attorney of said City, that the said City had a good and perfect defense to all actions brought on such street grade warrants, and good grounds for appealing from the said judgments so rendered, but notwithstanding the said decision and said information and said advice, the said City Council issued the said Indebtedness Fund warrants in satisfaction of said judgments and refused to appeal from said judgments and from other judgments that had already been rendered and refused to defend future actions brought on such street grade warrants of a similar nature and allowed all such actions to go by default until about January, 1899, as hereinbefore alleged.

8. That at and before the time the said agreement was made, the said judgments rendered, and the said Indebtedness Fund warrants issued, the said City of Port Townsend, was indebted beyond its constitutional limit of indebtedness for other purposes; that the total assessed valuation of all property tax-

able in said City according to the assessment for city purposes was \$1,541.426 for the year 1897, and \$1,532,056 for the year 1898; that the total amount of indebtedness of said City at all times during the years 1897 and 1898, before the issuance of any of the said Indebtedness Fund warrants, and exclusive of any of said warrants and exclusive of any and all street grade warrants, was over the sum of \$200,000, exclusive also of any indebtedness for supplying said City with water, artificial light or sewers, and that said City did not own or control any works for supplying such water, light or sewers before the year 1905; and that the total assets of said City, including the full amount of all uncollected taxes, penalties and interest due said City and assets of every other kind and nature including moneys from all sources and [63] cash on hand, did not at any time during the said year 1897 or during the year 1898, exceed the total sum of \$100,000.

9. That at no time has the assent of three-fifths of the voters of said city voting at any election, been had in any manner whatever for the purpose of incurring any part of the said \$130,000 street grade warrant indebtedness or any part of the said Indebtedness Fund warrants issued, nor has any part of said street grade warrant indebtedness of \$130,000 or any part of the said Indebtedness Fund warrant indebtedness ever been in any manner authorized by any of the voters or electors of said city, nor by any of the officers or authorized representatives of said city except as hereinbefore set forth.

10. That all of the said warrants sued on herein and all of the warrants mentioned in said complaint were ordered by the said City Council on February 17, 1898, at an adjourned meeting *of an adjourned meeting* of said council, and not at a regular meeting of said council as required by law; that such adjournments were taken without stating the purpose of the same, and that at time the regular meetings of the said City Council were fixed by Ordinance

585

No. [470] of said city for the first and third Tuesdays of each month.

11. That the said judgments in the said causes numbered, respectively, 1258 and 1538 of said Superior Court were obtained by fraud and were rendered without jurisdiction and without authority of law and the said warrants sued on herein were issued clandestinely and in fraud of the citizens and taxpayers of said city and without authority of law and in direct violation of the decision of the Supreme Court of the state. [64]

As a second affirmative defense to this action defendant alleges as follows:

1. Defendant repeats and makes part of this affirmative defense each and every allegation contained in paragraphs one, two and three of the first affirmative defense herein.

2. That the said plaintiff did not commence the said action within the time required by law; that the said warrants described in plaintiff's complaint and sued on herein were issued on February 18, 1898, by order of the City Council made on Febru-

ary 17, 1898; that in January, 1899, and afterwards, the said City of Port Townsend declared the said warrants illegal and invalid and refused to take any steps whatever to provide a fund for the payment of the same and refused to pay the same and refused to make a levy for the purpose of paying them; that such action of said council was spread upon the minutes of the council and made a matter of public record; that plaintiff and plaintiff's assignor well knew or by the exercise of reasonable diligence should have known of such action; and defendant further alleges that at the time the amended complaint herein was filed and served the time for bringing the said action had wholly expired and the statute of limitations had run against the said cause of action in said amended complaint set forth.

Where defendant prays that it may go hence without *day* and that it recover its costs and disbursements herein.

U. D. GNAGEY,  
City Attorney. [65]

State of Washington,  
County of Jefferson,—ss.

Harvey L. Tibbals, being first duly sworn, on oath says that he is the Mayor of the City of Port Townsend; that he has heard the foregoing answer of the said defendant city read, knows the contents thereof and believes the same to be true.

HARVEY L. TIBBALS.

Subscribed and sworn to before me this 13th day of Jan. 1912.

[Seal]

U. D. GNAGEY,

Notary Public in and for the State of Washington,  
Residing at Port Townsend, Wash.

Copy approving answer received and due service hereof accepted this 15th day of Jan., 1912.

J. A. BENTLEY,

Atty. for Pltf.

[Indorsed]: Answer. Filed in the U. S. District Court, Western Dist. of Washington, Jan. 15, 1912. A. W. Engle, Clerk. By \_\_\_\_\_, Deputy.  
[66]

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*In the United States Circuit Court, Western District of Washington, Northern Division.*

No. 1872.

FIRST NATIONAL BANK OF CENTRAL  
CITY,

Plaintiff,

vs.

CITY OF PORT TOWNSEND,

Defendant.

**Appearance of Charles E. Shepard, and Notice  
Thereof.**

Now comes Charles E. Shepard, a member of the bar of this court, and at the request of both the plaintiff and the plaintiff's present attorney of record, J. A. Bentley, Esq., enters his appearance as one of the attorneys of the plaintiff.

Dated at Seattle, Washington, April 22, 1912.

CHARLES E. SHEPARD.

To the Said Defendant and U. D. GNAGEY, Esq.,  
Its Attorney:

You will please take notice that I have entered my appearance as above set forth as an associate attorney, with J. A. Bentley, Esq., for the plaintiff, and that all papers herein may be served upon me at my office, No. 614 New York Building, Seattle, Washington.

CHARLES E. SHEPARD,

Copy of within appearance and notice received and due service hereby acknowledged this 22d day of April, 1912.

U. D. GNAGEY,  
Attorney for Defendant.

[Indorsed]: Appearance of Charles E. Shepard and Notice. Filed in the U. S. District Court, Western Dist. of Washington, Apr. 23, 1912. A. W. Engle, Clerk. By S., Deputy. [67]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

AT LAW—No. 1872.

FIRST NATIONAL BANK OF CENTRAL  
CITY,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Order Allowing Amendments to Answer to be Filed.**

The defendant presenting certain amendments to its answer which were heretofore allowed in open court by consent of counsel for plaintiff, it is now ordered that the said amendments be approved and the clerk is hereby directed to file the same as a part of defendant's answer.

Done in open court this 24th day of April, 1916.

JEREMIAH NETERER,

District Judge.

[Indorsed]: Order Allowing Amendments to Answer to be Filed. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 24, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [68]

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

AT LAW—No. 1872.

FIRST NATIONAL BANK OF CENTRAL  
CITY,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Amendments to Answer.**

Comes now the defendant herein and after leave of court first had and obtained in open court and by consent of attorney for plaintiff, files the follow-

ing amendments to its answer in order to clearly designate the parts of the complaint admitted by the original answer on file herein, that is to say:

1. That part of the complaint admitted in the first paragraph of defendant's answer reads as follows:

“The plaintiff by leave of the court amending the complaint in the above-entitled action, for an amended complaint, shows that the matter in dispute in this action exclusive of interest and costs, exceeds the amount of two thousand dollars; that the plaintiff is a banking corporation organized under the laws of the United States, and is located and doing business at Central City, State of Colorado; and the City of Port Townsend, defendant, is a municipal corporation, a city of the third class, in the County of Jefferson, State of Washington, and at all the times herein mentioned had and still has less than twenty thousand inhabitants.”

2. Those parts of the complaint admitted in paragraph two of said answer read as follows:

“The plaintiff further shows that the warrants Nos. 116, 117, 118, 119, 120, 128, 129, 130, 131, 132, 133, 142, 143, 144, 145 and 146 were each issued payable to the above-named Bank of British [69] Columbia, or order; that on the 19th day of February, 1898, said last-mentioned warrants were each duly presented by the said Bank of British Columbia to the Treasurer of the City of Port Townsend for payment and payment thereof demanded; that said Treasurer refused to pay the same for want of funds and then and there so endorsed on



the back of each warrant.”

“The plaintiff further shows that the warrants Nos. 49, 60, 100, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158 and 159 were each issued payable to the above-named Manchester Saving Bank or order; That on the 18th day of February, 1898, said last-mentioned warrants were each duly presented by said Manchester Savings Bank to the Treasurer of the City of Port Townsend for payment and payment thereof demanded; that said Treasurer refused to pay the same for want of funds and then and there so endorsed upon the back of each said warrant.”

3. Those parts of the complaint admitted in paragraph three of said answer read as follows:

“The plaintiff further shows that in the month of May, 1910, and before the commencement of this action, it presented for payment each of said sixteen warrants to the Treasurer of said City of Port Townsend at his office in said city and demanded the payment thereof and the said Treasurer then and there refused to pay each and every of the said warrants.”

“The plaintiff further shows that in the month of May, 1910, and before the commencement of this action it presented for payment each of said fourteen warrants to the Treasurer of said City of Port Townsend at his office in said city and demanded the payment thereof and the said Treasurer then and there refused to pay each and every of the said warrants.”

4. That part of the complaint admitted in para-

graph four of said answer is as follows:

“The plaintiff further shows that the distinguishing numbers and the amounts for which said one hundred fifty-eight warrants were [70] drawn are respectively as follows, viz. :” (The said complaint then giving the number and amount of each of the said 158 warrants and then ending as follows:)

“Said warrants together amounting to sixty-seven thousand, four hundred eighty-three dollars and forty-seven cents (\$67,483.47).”

5. That part of the complaint admitted in paragraph five of said answer reads as follows:

“The plaintiff further shows that the indebtedness of said City of Port Townsend, which at the time of the issue of the said one hundred fifty-eight warrants was entitled to be paid out of money belonging to the indebtedness fund, before any money then in that fund or which should thereafter come into the same would be applicable to the payment of the said one hundred fifty-eight warrants in numerical order, has been paid, except about three hundred dollars, all of which unpaid indebtedness was called in for payment prior to January, 1909.”

“The plaintiff further shows that the said City of Port Townsend has levied taxes for the payment of indebtedness from the Indebtedness Fund of said city as follows, viz. :

“In October, 1898, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.

“In October, 1899, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.

In September, 1900, 4/10 mill on the dollar upon a property assessment of \$1,161,700.00.

“In October, 1901, 1-55/100 mill on the dollar upon a property assessment of \$1,067,932.00.

“In October, 1902, 1-55/100 mill on the dollar upon a property assessment of \$855,870.00.

“In October, 1903, 1-55/100 mill on the dollar upon a property assessment of \$869,973.00. [71]

“In October, 1904, 1 mill on the dollar upon a property assessment of \$936,214.00.

“In October, 1905, 1 mill on the dollar upon a property assessment of \$960,907.00.

“In October, 1906, 1-50/100 mill on the dollar upon a property assessment of \$1,030,480.00.

“In October, 1907, 2 mills on the dollar upon a property assessment of \$965,160.00.

“In October, 1908, 1 mill on the dollar upon a property assessment of \$1,291,142.00.

“And that said city has, since said last-mentioned levy, neglected and omitted to levy any tax for the payment of indebtedness from the Indebtedness Fund.”

U. D. GNAGEY,  
Attorney for Defendant.

State of Washington,  
County of King,—ss.

U. D. Gnagey, being first duly sworn, on oath deposes and says that he is the attorney for the defendant in the above-entitled action; that he has read the amendments to the answer as set forth herein, knows the contents thereof and believes the same

to be true; that he makes this verification for and in behalf of the said defendant because all the facts therein stated are within his personal knowledge.

U. D. GNAGEY,

Subscribed and sworn to before me this 24th day of April, 1916.

L. B. STEDMAN,

Notary Public Residing at Seattle, Wash. [72]

[Indorsed]: Amendments to Answer. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 24, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [73]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Order Allowing Amendment of Plaintiff's Reply.**

This case came on for further hearing on this January 24, 1916, upon the settlement of the findings of fact and conclusions of law proposed by the respective parties, who were represented by their attorneys and counsel; and thereupon before the settlement and signing of the findings of fact and

conclusions of law the plaintiff applied for leave to amend its amended reply to the answer to correct a clerical error made by reason of inadvertence, and to make said amended reply conform to the facts in evidence, to wit, by amending paragraph No. 8 in the first division of said amended reply, on lines 24 to 30, inclusive, of page 2 thereof, so as to read as follows:

“8. The plaintiff admits the allegations in paragraph No. 10 of said answer, except that it says it has no knowledge or information sufficient to form a belief whether all of the warrants mentioned in the complaint were ordered by the City Council on February 17, 1898, and therefore denies the same, but it admits that all of the warrants which it owns and holds were ordered then at a meeting, but it denies that said meeting was an adjourned meeting of the City Council, as pleaded in said paragraph No. 10.” [74]

Thereupon, after hearing counsel and on motion of plaintiff's attorney, IT IS ORDERED that said amendment be and is hereby allowed, and that said amended reply be henceforth treated as amended in said Paragraph 8 of the first division thereof. Deft. objects and excepts to such amendment which is noted.

Done in open court, this 24th day of January, 1916.

JEREMIAH NETERER,  
District Judge.

[Indorsed]: Order Allowing Amendment of Plaintiff's Reply. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 24, 1916. Frank L. Crosby, Clerk. By E. M. L., Deputy. [75]

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Amended Reply.**

Now comes the plaintiff, and by leave of Court first had and obtained, files its amended reply to the answer, and for such amended reply respectfully shows to the Court that:

I.

1. The plaintiff has no knowledge or information sufficient to form a belief as to the allegations in paragraph No. 4 of said answer, and therefore denies the same.

2. The plaintiff has no knowledge or information sufficient to form a belief as to the allegations in paragraph No. 4½ in said answer, and therefore denies the same.

3. The plaintiff admits that before any of the actions mentioned in the answer were begun there was outstanding a considerable amount of street grade warrants drawn on special funds for street improvement, and that the warrants held and owned by the plaintiff and sundry other warrants held and owned by other persons, drawn on the Indebtedness Fund, were issued in payment of judgments of the Superior Court of Washington in said Jefferson County, against the defendant herein, on such special improvement warrants, aggregating the amount of Sixty-seven Thousand Four Hundred Eighty-three and Forty-seven One-hundredths Dollars (\$67,483.47), as set forth in the [76] amended complaint herein, but further than is herein admitted, the plaintiff has no knowledge or information sufficient to form a belief as to the allegations in said paragraph No. 5 of the answer, and therefore denies the same.

4. The plaintiff has no knowledge or information sufficient to form a belief as to any of the allegations in paragraph No. 6 of the answer, and therefore denies the same.

5. The plaintiff admits that on July 9, 1897, the Superior Court of the State of Washington rendered a decision in the case of German American Savings Bank vs. The City of Spokane, wherein the opinion of the Court is reported at page 315 of Vol. 17 of Washington Reports; but plaintiff denies that said decision was to the effect stated in paragraph No. 7 of said answer; and it further says that it has no

knowledge or information sufficient to form a belief as to the other allegations in said paragraph No. 7, and therefore denies the same and each thereof.

6. The plaintiff says that it has no knowledge or information sufficient to form a belief as to the allegations in paragraph No. 8 in said answer, and therefore it denies the same and each thereof.

7. The plaintiff has no knowledge or information sufficient to form a belief as to any of the allegations in paragraph No. 9 of said answer, and therefore denies the same and each thereof.

8. The plaintiff admits the allegations in paragraph No. 10 of said answer, except that it says it has no knowledge or information sufficient to form a belief whether all of the warrants mentioned in the complaint were ordered by the City Council on February 17, 1898, and therefore denies the same, but it admits that all of the warrants which it owns and holds were ordered then at an adjourned meeting, as pleaded in said paragraph No. 9.

9. Plaintiff denies each and every allegation in paragraph [77] No. 11 in said answer.

10. Plaintiff denies each and every allegation in the second paragraph of the second affirmative defense pleaded in said answer.

## II.

And for its further and affirmative reply to said answer, the plaintiff shows to the Court that by the judgments of said Superior Court of the State of Washington in and for Jefferson County, which judgments were rendered in the actions mentioned in the answer, the City of Port Townsend was adjudged



to be indebted in sundry sums, as aforesaid, aggregating over Sixty-seven Thousand Dollars (\$67,000.-00), to the sundry persons who were severally the plaintiffs in said actions; and by force of said judgments all matters of defense which were pleaded in said actions to the complaints of the several plaintiffs, and also all matters of defense which could have been pleaded thereto, became barred so that the same cannot again be pleaded or brought into controversy in this or any other court; and therefore the plaintiff avers, as it is advised and verily believes, that the defendant is estopped from pleading any of the affirmative matters and things which it has in its said answer set forth.

### III.

And for its second and separate affirmative reply to said answer, the plaintiff also shows to the Court that among said actions brought in said Superior Court and mentioned in said answer there were four actions entitled:

Bank of British Columbia v. Port Townsend,

E. M. Johnson v. Port Townsend,

E. Heuschober v. Port Townsend,

First National Bank v. Port Townsend,

all of which were brought on street grade warrants of the character set forth in said answer; that said actions had been heard in said [78] Superior Court upon demurrers of the defendant therein to the complaints, and thereupon judgments sustaining said demurrers and dismissing the actions had been rendered by said Court, and the several plaintiffs had appealed therefrom to the Supreme Court of

Washington, which Court upon hearing reversed the judgments of the lower Court and held that the defendant city was liable to the plaintiffs upon their causes of action set forth in their complaints; that thereupon said Superior Court, pursuant to the mandate of the Supreme Court and after opportunity to the defendant to make, farther defense, rendered its several judgments in favor of said plaintiffs, and said judgments are four of the judgments mentioned in the answer against said city, and in payment whereof sundry of the Indebtedness Fund Warrants were issued; that by virtue of said judgments of the Supreme Court of Washington, and of said Superior Court, the liability of the defendant upon the street grade warrants, such as are mentioned in the answer and as were in suit in said four cases and in sundry other causes of said Superior Court mentioned in the answer, was adjudicated and established beyond controversy, and therefore the plaintiff avers, as it is advised and verily believes, that the defendant is estopped by force of said judgments from again contesting, in this or any other Court, the liability of the City upon the causes of action which passed into judgment as aforesaid, and for which the sundry Indebtedness Fund Warrants, numbered from 2 to 159, inclusive, were issued.

WHEREFORE, the plaintiff prays judgment against the defendant as it has heretofore prayed by its complaint.

CHARLES E. SHEPARD,

Plaintiff's Attorney. [79]

United States of America,  
State of Washington,  
County of King,—ss.

Charles E. Shepard, being sworn says: That he is the attorney for the plaintiff in the above-entitled action, and makes this verification in its behalf because the plaintiff is a nonresident corporation and none of its officers resides or is within this State; that he has read the answer of the defendant and the foregoing amended reply thereto, and knows the contents of said amended reply, and that said amended reply is true to the best of his knowledge, information and belief, and is true as he verily believes.

CHARLES E. SHEPARD,

Subscribed and sworn to before me, this 14th day of June, 1915.

[Seal]                      CLARK M. BURKHEIMER,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Copy of within amended reply received and due service acknowledged this 19th day of June, 1915.

HASTINGS & STEDMAN,  
Attorneys for Deft.

[Indorsed]: Amended Reply. Filed in the U. S. District Court, Western Dist. of Washington. Northern Division. June 21, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [80]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

FIRST NATIONAL BANK OF CENTRAL  
CITY,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Defendant's Proposed Findings of Fact.**

This cause came regularly on for trial on the twenty-eighth day of April, 1915, before the Court without a jury, a jury trial having been duly waived by stipulation of the parties filing herein.

The plaintiff appeared by its attorney C. E. Shepard, and the defendants appeared by U. D. Gnagey, City Attorney, and L. B. Steadman, Esq. After the submission of the evidence offered by both plaintiff and defendant, the cause was submitted to the Court on such evidence and the stipulation of the parties filed herein, and upon the briefs and oral arguments of the respective parties, the Court on Saturday, December fourth, 1915, gave its decision in favor of the plaintiff and against the defendant and now makes the following findings of fact.

1. That the plaintiff, the First National Bank of Central City, a banking corporation, organized under the laws of the United States and is doing business at Central City, State of Colorado.

2. That the City of Port Townsend, Washington, was duly incorporated by the act of the legislative assembly of the Territory of Washington entitled "An Act to incorporate the city of Port Townsend" approved on the 28th day of November, 1881, and the act amendatory thereto entitled "An act to amend an act to incorporate the City of Port Townsend, Washington," approved November 28, 1883, and on August 16, 1896, the said city was duly re-incorporated under the general laws of the State of Washington as a city of the third class and ever since [81] said time has been and now is a city of the third class in said state.

3. On December 8, 1897, an action at law by the Bank of British Columbia, a corporation under the laws of the United Kingdom of Great Britain and Ireland, against the defendant herein, City of Port Townsend, for recovery of alleged damages for breaches of alleged contracts consisting of street grade warrants of the original character and terms hereinafter stated, was pending at issue in the Superior Court of the State of Washington in and for the County of Jefferson, that being the Court of general civil jurisdiction in that county. There had been a general appearance by the defendant and a waiver of jury trial of the issues of fact, and on that date the said cause together with seven other causes of similar street grade warrants came on for trial and were all tried on that day and the Court, at the close of the trial of said causes, announced a decision in favor of the plaintiff in said causes and against the defendant, City of Port Townsend. And on the

19th day of January, 1898, said Court signed findings in said cause of the Bank of British Columbia against the City of Port Townsend and also signed a judgment therein on said day and on February first, 1898, both the said findings and the said judgment were filed with the clerk of said court, that the said judgment was for the sum of \$18,600.15 and the costs of the action with interest at 10% per year from the date on the judgment.

4. That among the eight actions at law described in the preceding paragraph was that of the Manchester Savings Bank, a corporation under the laws of the State of New Hampshire, against the defendant city herein for the recovery of alleged damages for breaches of alleged contracts consisting of street grade warrants of the origin, character and terms hereinafter stated was pending at issue on said December 18, 1897, and was tried on said day by the Court without a jury, a jury having been waived. The Court, as stated in the preceding paragraph, tried this cause and the seven other causes on said day and immediately after [82] the said trial on said day announced its decision in favor of the plaintiff and against the defendant city and on January 20, 1898 signed findings of fact in said cause which were filed with the clerk of the said court, February 2, 1898 and on February 5, 1898 judgment in said cause was signed and filed with the clerk of the court in the sum of \$7,788.71 and costs of suit with interest at 10% per annum from date of judgment.

5. Each of said judgments was rendered for breaches of alleged contracts of said city which were so-called street grade warrants drawn on special improvement funds to be provided by special assessments on property improved and benefited by such street improvements, pursuant to proper ordinances of said city. The local improvement districts were formed, the contracts awarded, the improvements made, the special funds created and the warrants issued on such funds and those which were in suit in said two actions came by endorsement and transfer to the possession and ownership of the respective plaintiffs. Said warrants were not paid in full and by *there* terms there was due on them to said plaintiffs the respective amounts adjudged but the sums paid on them were paid out of such special improvement funds and not otherwise.

6. The following is the form of said special assessment or street grade warrants, and the individual warrants involved in said two suits differed only in number, date, amount and payee's name, to wit:

No. —.

City of Port Townsend, W. T.—.

A. D. 188—.

By order of the City Council of — of —, A. D., 188— the Treasurer of the City of Port Townsend, Washington Territory; Pay to —, or Order, — Dollars and charge the same to the account of — Street Improvement Fund. The City of Port Townsend hereby guarantees the payment of said sum of

— Dollars with interest thereon at Ten per cent (10%) per annum payable semi-annually.

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Mayor of the City of Port Townsend. [83]

7. No contract, ordinance or resolution authorized the City of Port Townsend to guarantee the payment of said warrants.

8. Besides the two actions just described, sundry other actions, to wit: Six in number were brought by other holders of similar special assessment or street grade warrants for street improvements in the City of Port Townsend against said City in said Superior Court, in each of which the City appeared and answered, and all of which said actions came on for trial on said December 18th, and were tried as alleged in paragraph three hereof and resulted in judgment against the City and the said warrants sued on in said actions were in their origin, forms and legal relations identical with those in said two actions just described, with the exception that they were drawn on different street improvement funds, and on the face of some there appeared no guarantee of payment by the City and on the face of others there appeared a guarantee by the City for the payment of interest only, but as in other cases no contract ordinances or resolution authorized the City or its officers to make such guarantee. The findings and judgment in four of said cases including the Bank of British Columbia case were signed January 19, 1898 and filed with the clerk of the court February 1, 1898, and the findings in the four other cases including the case of the Manchester Savings Bank



were signed on January 20, 1898 and filed with the clerk of the court February 5, 1898 and the judgment in said four cases were signed and filed February 5, 1898. The total amount of all of the said judgments including the eight cases described amounted to the sum of about \$65,000.

9. That afterwards, during the year 1898, the said City Council allowed all actions on street grades warrants to go to judgment by default and the City paid all of such default judgments by warrants drawn on the Indebtedness Fund and continued so to do until an additional amount of about \$30,000 Indebtedness Fund warrants had been issued, making in all about the sum of \$95,000. [84]

10. From and after January, 1899, when a change in city officers occurred, the new City Council refused to allow any more defaulted judgments to be taken against the City on any street grade warrants or special assessments warrants of the kind and character hereinbefore described, of which there were still a considerable quantity outstanding and successfully contested all suits on such warrants and appealed from the judgments taken on such warrants in all cases where the time for appeal had expired.

11. Negotiations between the City and the plaintiffs in the eight cases mentioned and described, looking to a settlement of said claimed liabilities, were opened. The City Council held a regular meeting on February 15, 1898, that being the third Tuesday in said month, according to ordinance number 585 entitled "An Ordinance fixing the time of meeting

of the Common Council of the City of Port Townsend, Washington, and repealing Ordinance number 470 and all other ordinances on that subject" passed by the Common Council of the City of Port Townsend, Washington, November 19, 1895, and approved by the Mayor November 21, 1895, which said ordinance fixed the times of the regular meeting of said Council on the first and third Tuesdays of each month, at the hour of eight o'clock, from April to October inclusive and from December to March inclusive at the hour of one-half after seven o'clock. At the meeting so held on February 15, 1898, all the members of said Council and the Mayor and City Attorney were present at said regular meeting. Under the heading of New Business, the clerk read notice of attorneys in street grade warrant cases, but what such notice consisted of is nowhere disclosed by the record; after the reading of such notice and the transaction of other business in no way connected with such matter, the City Council took an adjournment of the meeting until three o'clock P. M. of the next day without stating the object or purpose of the adjournment. The Council met in pursuance of said adjournment when all the members were again present; at said adjourned meeting the said Council discussed the matter of [85] paying the street grade warrant judgments and after such discussion passed the following resolution and then adjourned until the next day to wit:

"Whereas judgment has been duly entered in the Superior Court of the State of Washington, for Jefferson County, against the City of Port Town-

send, in favor of the following named parties, for the following amounts respectively, to wit:

Merchants Bank of Port Town-	
send . . . . .	\$14,375.28
Manchester Savings Bank . . . . .	7,788.71
Commercial Bank of Port Town-	
send . . . . .	10,324.44
John Barneson . . . . .	4,587.33
Bank of British Columbia . . . . .	18,800.00
E. M. Johnson . . . . .	1,812.23
First National Bank of Port	
Townsend . . . . .	7,625.00
E. Heuschober . . . . .	482.65
Alonzo Elliott . . . . .	1,400(about)

Together with costs and interest from date of judgments at 10% per annum.

And whereas the said parties have duly presented the said claims under said judgments against the city to the City Council, for settlement and payment;

And whereas it is the opinion of the said Council that said claims are a just and legal obligation against the City of Port Townsend and should be satisfied and paid;

Now, Therefore, be it resolved by the City Council of the City of Port Townsend that said claims and judgments be and the same are hereby allowed and ordered paid as claims against the said City and that warrants be drawn in the usual form in favor of the said respective parties for the respective amounts of the said judgments, costs and interest, on the "Indebtedness Fund" of said City, which warrants shall be signed by the City Clerk and

Mayor and with the city seal attached, and delivered to the said respective parties or their attorneys immediately upon the satisfaction of said judgments of record in the Superior Court aforesaid, that the above warrants shall draw interest at the rate of 6% per c. p. annum from date of same and until paid, and also that this resolution is upon the condition that all of said parties accept the conditions herein named on or before February 17'' at 3 o'clock P. M. . . . ''

12. Thereupon and on the next day the judgment creditors, named in the resolution and there being represented, filed the following acceptance of the City's proposition made the day before and embodied in said resolution, viz.:

Port Townsend, Wash., Feby. 17, 1898.

To the Mayor and City Council of the City of Port  
Townsend.

Gentlemen:

We, the undersigned judgment creditors of the said City [86] of Port Townsend, hereby agree to accept and do hereby accept the proposition of the said City and its Council made on the 16th day of February, 1898, to satisfy and pay our respective judgments against the said City by issuing warrants for the full amount of said judgments, interest and costs, said warrants to be drawn on the "Indebtedness Fund" of said City, and to bear interest from the date of their issue at the rate of six (6) per cent per annum; and hereby agree to cancel said judgments in full of record in the Superior Court of Jef-

person County, Washington upon the receipt of said warrants.

BANK OF BRITISH COLUMBIA OF  
VICTORIA, B. C.,  
FIRST NATIONAL BANK OF PORT  
TOWNSEND,

E. M. JOHNSON,  
EMIL HEUSCHOBBER.

By MORRIS B. SACHS,  
Attorney of Record in Said Causes for Said  
Judgment Creditors.

THE MERCHANTS' BANK OF PORT  
TOWNSEND,  
THE COMMERCIAL BANK OF PORT  
TOWNSEND,

JOHN BARNESON,  
MANCHESTER SAVINGS BANK,

By W. W. FELGER,  
Attorney of Record in Said Causes for Said  
Last Four Named Judgment Creditors.

ALONZO ELLIOTT,  
By PRESTON, CARR, GILMAN,  
R. W. JENNINGS,

His Attorney.

In pursuance of said resolution and acceptance the City Officers on the next day issued "Indebtedness Fund Warrants" all bearing date February 18, 1898, numbered from 2 to 159, both inclusive, in satisfaction of such judgments, without appealing therefrom.

13. All of said warrants were inscribed on engraved blanks of the City of Port Townsend, signed by persons who were, on their dates, the Mayor and

the City Clerk of the City of Port Townsend, marked on their face in red ink "Indebtedness Fund," and the following is the form of each warrant:

\$——. Port Townsend, Wash. ——, No. ——

By order of City Council ——, A. D. 18——, of the City of Port Townsend, Wash., the Treasurer of said City will pay ——, or order, —— Dollars, for pt. satisfaction of judgment, case, vs. City, with interest at six per cent per annum.

"Indebtedness Fund."

D. H. HILL,

Mayor of the City of Port Townsend.

AUGUST DUDDENHAUSEN,

City Clerk.

14. The warrants Nos. 29, 30, 31, 33, 34, 41, 42, 54, 55, 65, 66, 89, 90, 91, 92, 93, 107, 108, 109, 110, 111, 121, 122, 123, 124, 135, 137, 147 and 148 were all presented to the City Treasurer on February 18, 1898, and payment demanded, and he then refused payment and stamped each: "Presented February 18, 1898, not paid for want of funds" and signed "John [87] Sichenbaum, City Treasurer," and Nos. 116–120, 128–133, 142–146, all numbers inclusive, and 149, were so presented and refusal dated "February 19, 1898"; and said warrants in this sentence enumerated were, in the ordinary course of the plaintiff's business, assigned and transferred to it and have ever since then been owned by it.

15. Nothing has been paid on any of said warrants. Warrant No. 1 of said series was not issued for any indebtedness growing out of any street improvement and was paid before this action was be-

gun. Warrant No. 2 was issued to Alonzo Elliott in payment of a judgment against the city on a street improvement warrant and has been paid in pursuance of a judgment of this court in the case of David Perkins vs. Charles L. Intermela, Treasurer, since this action was begun, amounting with interest and costs to \$3,467.63. Nothing has been paid on any of the other warrants in said list above enumerated.

16. Since the issue of said warrants above listed, the defendant has levied taxes for the payment of indebtedness from the Indebtedness Fund of said City in pursuance of Chapter 84 of the Session Laws of the Legislature passed at the session of 1897, as follows:

In October, 1899, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.

In September, 1900, 4/10 mill on the dollar upon a property assessment of \$1,161,700.00.

In October, 1901, 1 55/100 mill on the dollar upon a property assessment of \$1,067,932.00.

In October, 1902, 1 55/100 mill on the dollar upon a property assessment of \$855,870.00.

In October, 1901, 1 55/100 mill on the dollar upon a property assessment of \$869,973.00.

In October, 1904, 1 mill on the dollar upon a property assessment of \$936,214.00.

In October, 1905, 1 mill on the dollar upon a property assessment of \$960,967.00. [88]

In October, 1906, 1 50/100 mill on the dollar upon a property assessment of \$1,030,480.00.

In October, 1907, 2 mills on the dollar upon a property assessment of \$965,160.00.

In October, 1908, 1 mill on the dollar upon a prop-

erty assessment of \$1,291,142.00.

No levy for the payment of indebtedness from the Indebtedness Fund under said statute or otherwise, has been made since the levy of 1908. But the levies that were so made were not made to pay any of the series of warrants known as "Indebtedness Fund Warrants" but were made solely to pay other warrants outstanding on February 1, 1898, and by the Act of 1897 creating the Indebtedness Fund payable out of such fund.

17. The following is a list by years from 1898 to 1913, inclusive, of the assessed valuation of Port Townsend property, its levy for the Indebtedness Fund when any such levy was made, and the tax charged against the property for such levy:

Year.	Assessed Valuation.	Levy for Gen. In- debtedness.	Computed Amount Realized.
1898	\$1,516,567.00	.1	\$ 151.66
1899	1,466,910.00	.1	146.69
1900	1,161,685.00	.4	464.67
1901	1,172,071.00	1.55	1816.71
1902	885,870.00	1.55	1328.60
1904	936,214.00	1.0	936.21
1905	960,697.00	1.0	960.70
1906	1,030,480.00	1.5	1545.72
1907	1,181,323.00	2.0	2362.65
1908	1,290,942.00	1.0	1290.94
1909	1,292,404.00		
1910	1,317,201.00		
1911	1,364,936.00		
1912	1,365,235.00		
1913	1,391,639.00		



18. That on September 13, 1906, the City of Port Townsend passed an ordinance number 722, entitled "An Ordinance to define the duties of the City Treasurer of the City of Port Townsend, section nine of which said ordinance reads as follows, to wit: "It shall be the duty of the [89] of the City Treasurer to turn into the 'indebtedness fund' all moneys derived by the city from the County of Jefferson for its share of the proceeds of the sale of any county property, and all moneys from city taxes, penalty and interest, excepting moneys collected for the payment of any city bonds, and excepting the tax levies for the three preceding years, which he shall segregate, immediately upon receipt into the respective funds of the city, according to the respective levies therefor, until all the legal outstanding claims against the 'indebtedness fund' of the city shall have been paid, but the City Treasurer shall pay no 'indebtedness fund' warrant, excepting the 'general expense,' 'fire and water,' 'light' and 'road' fund warrants without the special order of the city council."

19. On February 1, 1898, there were the following amounts of warrants outstanding and unpaid on the different funds mentioned in Section 9 of said ordinance No. 722, to wit: On the Fire & Water Fund, the sum of \$891.35; on the Road Fund, the sum of \$2,016.27; on the Light Fund, the sum of \$6,680.25; on the General Expense Fund, the sum of \$31,150.70, the several sums herein given representing the fact value of said warrants. That during the years 1897 and 1898 there were practically the same amount of

warrants outstanding on the different funds herein mentioned.

20. Besides the foregoing warrants there were outstanding certain other warrants, amounting in all, principal and interest, on the 1st day of October, 1895, to the sum of \$53,300.00, \$29,100 of which were exchanged for municipal bonds issued by authority of a popular election validating said \$53,300 and the remainder of said warrants consisting of \$24,200, with interest, became payable out of the Indebtedness Fund according to the act of 1897 creating said fund.

21. On the first day of February, 1898, when the act of 1897 creating the Indebtedness Fund went into effect, the city had a large [90] amount of delinquent taxes outstanding for 1891, 1892, 1893 and 1894, which the City Treasurer afterwards proceeded to collect, and had also delinquent taxes for 1895 and 1896 outstanding. The City collected its own taxes for 1894 and previous years, but by an act entitled "An Act to provide for the assessment and collection of taxes in municipal corporations of the third and fourth class in the State of Washington, and declaring an emergency" approved March 9, 1893, and by city ordinance No. 569 entitled "An Ordinance relating to the assessment and collection of taxes in the City of Port Townsend" approved March 20, 1895, the County Treasurer of Jefferson County was made the collector of city taxes for 1895 and subsequent years. In 1902 the County Treasurer, according to law, foreclosed the lien of the state and county taxes for 1891, 1892, 1893 and 1894, and the state, county and city taxes for 1895. The foreclosure proceedings

resulted in the forfeiture of a large amount of property to the county, and the deed for the same to the county was filed with the County Auditor on January 12, 1903. At said time the delinquent taxes of the city that remained uncollected for 1895, amounted to \$3,450.12. Afterwards the County Treasurer foreclosed the lien of the state, county and city taxes for 1896, which resulted in the forfeiture of property to the county and the deed to the county for said property was executed and filed with the auditor of said county on the —— day of ——; that at the time the said property was so forfeited to the county, the delinquent city taxes for 1896, that remained uncollected amounted to \$4,284.79.

22. When said judgments above mentioned were entered and the Indebtedness Fund warrants issued in payment thereof, the city was indebted beyond its constitutional limit of indebtedness, exclusive of said warrants and of any indebtedness for supplying the city with water, artificial light or sewers, and it did not own or control any works for supplying water, light or sewers until the year 1905, and the total assets of the city including all uncollected taxes, penalties and interest due the city, money from all sources and cash on [91] hand, were not sufficient, during any part of the years 1897 or 1898, to bring the city within its constitutional limit of indebtedness.

23. At and before any of the cases herein mentioned came on for trial, the Supreme Court of Washington had decided the case of the German-American Savings Bank of the City of Spokane reported in

17 W. 315, and the said attorney of said city, S. A. Plumley, at and before said time had full knowledge of said decision and the said decision and its effect on said street grade warrants was a matter of common knowledge at and before said time among the attorneys in said City of Port Townsend.

24. The Court further finds that the regular meeting of the City Council held in pursuance of the Ordinance of said city on February 15, 1898, was a short meeting, and at said meeting there came up for transaction less business than was usually transacted at the regular meetings of said Council, and that the said Council adjourned from the 15th to the 16th, and from the 16th to the 17th, not because so much business came up for transaction that the same could not all be transacted at the said regular meeting, but because business that the said Council desired to transact was not yet right for transaction. [92]

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Stipulation Waiving Jury Trial.**

It is hereby stipulated between the parties, by their attorneys, that a trial of the issues in this action before a jury is hereby waived by both parties, and that the case may be set for trial at the pending term, on such date as may be fixed by the Court.

Dated May 22, 1914.

CHARLES E. SHEPARD,  
Attorney for Plaintiff.

U. D. GNAGEY,  
Attorney for Defendant.

[Indorsed]: Stipulation Waiving Jury Trial. Filed in the U. S. District Court, Western Dist. of Washington. May 26, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [93]

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Findings of Fact and Conclusions of Law.**

This cause came on for trial before the Court with-

out a jury, on April 28, 1915, after a written waiver of a jury trial by both parties was filed; and the plaintiff appeared by Charles E. Shepard, its attorney, and the defendant by U. D. Gnagey, its attorney, and L. B. Stedman, of counsel; and upon the evidence submitted by the parties, and after consideration thereof, and of the oral arguments and the briefs presented to the Court in their behalf respectively, the Judge of this court now makes and files the following findings of fact and conclusions of law:

#### FINDINGS OF FACT.

1. The plaintiff is and has been ever since January 1, 1898, a banking corporation organized under the National Bank Act of the United States and located at Central City in the State of Colorado.

2. The defendant is and has been ever since August 16, 1896, a municipal corporation under the general statute for incorporation of cities in the State of Washington and classified thereunder as a city of the third class, that is, as of a population of 20,000 or less, and is located in the County of Jefferson therein.

3. On February 1, 1898, in an action then pending and at [94] issue in the Superior Court of the State of Washington in and for Jefferson County, which was and is a court of general jurisdiction for the trial of civil actions, and in which action the Bank of British Columbia, a corporation organized under the laws of the Kingdom of Great Britain and located and resident at Victoria in the Province of British Columbia was the plaintiff and the City of Port

Townsend was the defendant, said Superior Court, upon the previous appearance of the parties before it and on evidence submitted to the Court, duly rendered a judgment at law in favor of said plaintiff and against said defendant for the sum of eighteen thousand six hundred dollars and fifteen cents as the debt due to said plaintiff and for the costs and disbursements of the action; and said judgment, by its terms, bore interest at ten per cent per annum from its date.

4. On February 5, 1898, in an action then pending and at issue in said Superior Court in and for said Jefferson County, brought by Manchester Savings Bank, a corporation organized under the laws of the State of New Hampshire, and located and resident at the City of Manchester therein, as the plaintiff against said City of Port Townsend as the defendant, said Superior Court, upon the previous appearance of the parties before it and on evidence, submitted to the Court, duly rendered, a judgment at law in favor of the plaintiff and against the defendant therein for the sum of seven thousand seven hundred eighty-eight dollars and seventy-one cents, as the debt due to said plaintiff, and for the costs and disbursements of the action; and said judgment, by its terms, bore interest at ten per cent per annum from its date.

5. The warrants upon which said actions were based were so-called street grade warrants drawn upon special improvement funds to be paid out of special assessments on the property improved and benefited by such street improvement. Local improvement districts were formed and contracts

awarded and such improvements were made, special funds were created and warrants were issued on such funds, and such warrants so issued became the property of the Bank of British Columbia and the Manchester Savings Bank, plaintiffs in said actions.

6. There was no contract, ordinance or resolution passed by the City Council of the City of Port Townsend which authorized the City of Port Townsend to guarantee the payment of said warrants.

7. On February 17, 1898, the Mayor and the City Council of Port Townsend, being its governing and administrative authorities, unanimously decided to pay said two judgments, being then unpaid, by the issue to said respective judgment creditors of the appropriate [95] amounts of warrants of said city, drawn against the Indebtedness Fund of the City and which warrants were to draw interest at six per cent per annum until their payment. Said judgment creditors accepted the offer of the City to that effect.

8. Said City at the same time was making a like disposition of sundry other judgments then recently entered against it; and accordingly it issued against said "Indebtedness Fund" sundry warrants, serially numbered from No. 2 to No. 159, aggregating about Sixty-seven Thousand Dollars, all dated on February 18, 1898, and each of said warrants stated that it was issued in part satisfaction of a certain named judgment, according to the facts.

9. Of the warrants issued as aforesaid the following warrants in suit herein, were a part:



Number.	Amount.	Payee.
49	\$500.00	Manchester Savings Bank
60	250.00	“ “ “
100	250.00	“ “ “
116	500.00	Bank of British Columbia
117	500.00	“ “ “
118	500.00	“ “ “
119	500.00	“ “ “
120	500.00	“ “ “
128	500.00	“ “ “
129	500.00	“ “ “
130	500.00	“ “ “
131	500.00	“ “ “
132	500.00	“ “ “
133	500.00	“ “ “
142	500.00	“ “ “
143	500.00	“ “ “
144	500.00	“ “ “
145	500.00	“ “ “
146	380.00	“ “ “
149	500.00	Manchester Savings Bank
150	263.50	“ “ “
151	500.00	“ “ “
152	500.00	“ “ “
153	500.00	“ “ “
154	500.00	“ “ “
155	500.00	“ “ “
156	500.00	“ “ “
157	500.00	“ “ “
158	500.00	“ “ “
159	309.30	“ “ “

10. All of said warrants were ordered to be issued by unanimous vote of the Mayor and City Council of the defendant, at a regular meeting thereof duly held according to the statute, and after deliberation on the subject of said judgments; and each warrant was signed by the Mayor and the City Clerk in the name of the City. The aggregate of the warrants issued to each of said judgment creditors was equal to the amount due on its judgment and no more.

11. Said warrants so numbered were for the respective amounts above stated and were payable to the Manchester Savings Bank, and the Bank of British Columbia respectively, as set forth in the seventh finding, and were delivered to the respective payees on their date.

12. Said warrants payable to the Manchester Savings Bank were presented by it to the City Treasurer of said City on February 18, 1898, for payment, but payment was refused for want of funds. Said warrants payable to the Bank of British Columbia were presented by it to said City Treasurer for payment, on February 19, 1898, but payment was refused for want of funds.

13. Said warrants enumerated in the ninth finding were purchased from said respective payees and paid for by the plaintiff, on different dates, but all in the year 1898, at their then fair market value, in the ordinary course of banking business, and without notice of any intention on the part of the defendant to contest their payment; and the plaintiff has ever since then held all said warrants as a part of its assets.

14. There was no fraud or fraudulent collusion or acquiescence in the payment of an unlawful claim, on the part of the Mayor and City Council in authorizing the payment of said judgments by said warrants, disclosed by the evidence, or in the acts of the Mayor and City Clerk in issuing said warrants. [97]

15. Since the issue of said warrants above listed, the defendant has levied taxes for the payment of indebtedness from the Indebtedness Fund of said city in pursuance of Chapter 84 of the Session Laws of the Legislature passed at the session of 1897, as follows:

In October, 1899, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.

In September, 1900, 4/10 mill on the dollar upon a property assessment of \$1,161,700.00.

In October, 1901, 1-55/100 mill on the dollar upon a property assessment of \$1,067,932.00.

In October, 1902, 1-55/100 mill on the dollar upon a property assessment of \$855,870.00.

In October, 1903, 1-55/100 mill on the dollar upon a property assessment of \$869,973.00.

In October, 1904, 1 mill on the dollar upon a property assessment of \$936,214.00.

In October, 1905, 1 mill on the dollar upon a property assessment of \$960,967.00.

In October, 1906, 1-50/100 mill on the dollar upon a property assessment of \$1,030,480.00.

In October, 1907, 2 mills on the dollar upon a property assessment of \$965,160.00.

In October, 1908, 1 mill on the dollar upon a property assessment of \$1,291,142.00.

No levy for the payment of indebtedness from the Indebtedness Fund under said statute or otherwise, has been made since the levy of 1908. [98]

16. The defendant, since 1898, has realized from delinquent tax collections and the sales of land for taxes, contributory to its Indebtedness Fund, as specified in said Chapter 84, sundry sums to the credit of said fund, of which it has applied portions to the payment of all its outstanding indebtedness prior in rank to the warrants serially numbered from No. 2 to No. 159, as aforesaid; but certain other portions of the funds so received have been transferred from the Indebtedness Fund and used for other purposes, under orders of the City Council.

17. No call for any warrants drawn on the Indebtedness Fund except Nos. 1 and 160 has been issued, nor have any such warrants been paid except said two warrants and No. 2, which it paid pursuant to a judgment of this court in the cause entitled David Perkins vs. Charles L. Intermela, Treasurer, et al., No. 1931 at Law, being a warrant issued for a judgment of said Superior Court against said city, which was so paid by virtue of the same resolution of the City Council above-mentioned, and at the same time. Under the statutes of Washington, the time for action to recover or enforce the payment of municipal warrants does not begin until a call to present them for payment has been made and published.

18. There is now due to the plaintiff from the defendant upon the warrants enumerated in the

seventh finding, thirteen [99] thousand, nine hundred fifty-two dollars, eighty cents (\$13,952.80), with interest at six per cent per year on six thousand seventy-two dollars, eighty cents (\$6,072.80) thereof from February 18, 1898, and on seven thousand, eight hundred eighty dollars (\$7,880.00) thereof from February 19, 1898. [100]

#### CONCLUSIONS OF LAW.

1. The warrants in suit are valid and subsisting liabilities of the defendant for the amount of their face and accrued interest from their respective dates of presentation and refusal to pay.

2. The defendant is estopped by the judgments in liquidation of which the warrants in suit were issued from relying on any defense which might have been pleaded to the actions in which those judgments were entered. The defenses that the defendant city was not liable on the causes of action sued on in said former actions and that it was already indebted beyond its constitutional limit of debt fall under this head.

3. It was the duty of the defendant to levy a property tax to the amount of six mills on the dollar of assessed valuation for the Indebtedness Fund, during every year beginning with 1898, and to apply the proceeds to their proper use according to law, until the warrants in suit with accrued interest were paid.

4. The plaintiff is entitled to judgment against the defendant for thirteen thousand, nine hundred fifty-two dollars, eighty cents with accrued interest

as stated in the eighteenth finding of fact, and with the costs of the action; and to the process of this court to enforce payment.

Let judgment be entered accordingly.

Seattle, January 31, 1916.

JEREMIAH NETERER,

District Judge.

Copy received 1-31-196.

L. B. STEDMAN,

[Indorsed]: Findings of Fact and Conclusions of Law. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 31, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [101]

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Exceptions to the Refusal of the Court to Make Findings of Fact Requested by Defendant, and to the Findings as Made by the Court.**

To the Honorable JEREMIAH NETERER, Judge of the Above-entitled Court:

Comes now the above-named defendant herein and

excepts to the refusal of the Court to make the findings of fact requested by the defendant and to the findings as made by the Court, as follows, to wit:

1.

It excepts to the refusal of the Court to make the second finding requested by the defendant in regard to the incorporation of said defendant.

2.

It excepts to the refusal of the Court to make the third finding requested by defendant upon the ground that the matters and facts therein to be found were matters and facts proven by the testimony and record.

3.

It excepts to the refusal of the Court to make the fourth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

4.

It excepts to the refusal of the Court to make the fifth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record. [102]

5.

It excepts to the refusal of the Court to make the seventh finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

6.

It excepts to the refusal of the Court to make the eighth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

7.

It excepts to the refusal of the Court to make the ninth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

8.

It excepts to the refusal of the Court to make the tenth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

9.

It excepts to the refusal of the Court to make the twelfth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

10.

It excepts to the refusal of the Court to make the thirteenth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

11.

It excepts to the refusal of the Court to make the



fifteenth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record. [103]

12.

It excepts to the refusal of the Court to make the sixteenth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

13.

It excepts to the refusal of the Court to make the seventeenth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

14.

It excepts to the refusal of the Court to make the eighteenth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

15.

It excepts to the refusal of the Court to make the nineteenth finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

16.

It excepts to the refusal of the Court to make the twentieth finding requested by the defendant, upon the ground that the matters and facts therein asked

to be found were matters and facts proven by the testimony and record.

## 17.

It excepts to the refusal of the Court to make the twenty-first finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

## 18.

It excepts to the refusal of the Court to make the twenty-second finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and [104] facts proven by the testimony and record.

## 19.

It excepts to the refusal of the Court to make the twenty-third finding requested by the defendant, upon the ground that the matters and facts therein asked to be found were matters and facts proven by the testimony and record.

## 20.

It excepts to the refusal of the Court to make the twenty-fourth finding requested by the defendant, upon the ground that the matters and facts herein asked to be found were matters and facts proven by the testimony and record.

## 21.

Said defendant excepts to the third finding of fact signed by the Court, especially that portion thereof which states that said judgment referred to therein was granted upon evidence submitted, and that said judgment was duly rendered, upon the

ground that the same was not supported by the facts in this cause.

22.

Defendant excepts to the third finding of fact as signed by the Court, upon the ground that the same was not supported by the facts in this cause.

23.

Defendant excepts to the tenth finding of fact as made by the Court, especially that portion thereof, which states that said warrants were ordered to be issued at a regular meeting of the City Council held according to statute, upon the ground that same is contrary to the evidence in this, to wit: that it appeared in the evidence that said order was made at an adjourned meeting of said City Council.

24.

Defendant excepts to the fourteenth finding as made by the Court, upon the ground that same is not a finding of fact but a conclusion of law. [105]

25.

Defendant excepts to the eighteenth finding of fact as made by the Court, upon the ground that the same is a conclusion of law, and the same states that there is due the sums therein mentioned from defendant, without the additional finding from what fund the same is due, and that said finding bears the possible interpretation of finding a general liability of the defendant and not one to be paid out of the moneys in the indebtedness fund of said defendant.

26.

Defendant excepts to the first conclusion of law, upon the ground that the same is not justified under

the law and the facts in this cause.

27.

Defendant excepts to the second conclusion of law signed by the Court, upon the ground that the same is not justified under the law or by the facts in this cause.

28.

Defendant excepts to the third conclusion of law, upon the ground that the same is not justified under the law and the facts in this cause.

29.

Defendant excepts to the fourth conclusion of law, upon the ground that the same purports to be a general judgment against the defendant and not a judgment to be paid out of special fund, upon which the warrants, involved in this litigation, were drawn.

U. D. GNAGEY,  
HASTINGS & STEDMAN,  
Attorneys for Defendant.

Copy received Jan. 31, 1916.

CHARLES E. SHEPARD,  
For Pltf.

[Indorsed]: Exceptions to Refusal of Court to Make Findings Requested by Deft. and to Findings as Made by the Court. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 31, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [106]

*In the District Court of the State of Washington  
for the Western District of Washington, North-  
ern Division.*

AT LAW.—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

### **Judgment.**

This cause having been heretofore brought on for trial of the issues joined herein, before the Court without a jury, after a written waiver of a jury trial by both parties, the Judge of this court having made and filed his findings of fact and conclusions of law ordered a judgment to be entered in favor of the plaintiff according thereto,

Now on motion of Charles E. Shepard, plaintiff's attorney,

It is adjudged that The First National Bank of Central City, Colorado, the plaintiff, do have and recover from the City of Port Townsend, the defendant, the sum of Twenty-eight Thousand Nine Hundred Seventy-eight Dollars and Sixty-nine Cents (\$28,978.69) as the indebtedness due to the plaintiff upon the Indebtedness Fund Warrants issued by the defendant and in suit herein, and in addition thereto the taxable costs and disbursements of the

plaintiff to be taxed by the clerk, and that the plaintiff have process of this Court in its favor against the defendant for the collection of said indebtedness and costs, according to law and the practice of the court.

Done in open court this January 31, 1916.

JEREMIAH NETERER,  
District Judge.

Copy received 1-31-1916.

L. B. STEDMAN.

[Indorsed]: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 1, 1916. Frank L. Crosby, Clerk. By E. M. L., Deputy. [107]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

NO. 1872.

FIRST NATIONAL BANK OF CENTRAL CITY,  
Plaintiff,

vs.

CITY OF PORT TOWNSEND,  
Defendant.

**Defendant's Exceptions to Judgment and Order.**

Comes now the above-named defendant, City of Port Townsend, and excepts to the judgment dated herein on the 31st day of January, 1916, upon the grounds:

1. That said judgment is not warranted by the

findings of facts and conclusions of law filed herein;

2. Said judgment is not warranted by the facts in this cause;

3. That any judgment rendered herein should be a judgment to be paid out of the indebtedness fund of the City of Port Townsend and not a general judgment against the City of Port Townsend as rendered herein;

4. That the Court has not power upon indebtedness fund warrants to enter a general judgment against the City of Port Townsend;

5. That said judgment is contrary to law.

U. D. GNAGEY,

HASTINGS & STEDMAN,

Attorneys for Defendant.

The foregoing exceptions to the judgment were, by the defendant, presented to the Court and are now by the Court allowed, this 28th day of February, 1916.

JEREMIAH NETERER,

Judge. [108]

Service of the within Exceptions to Judgment by delivery of a copy to the undersigned is hereby acknowledged this 24th day of Feby., 1916.

CHARLES E. SHEPARD,

Attorney for Plaintiff.

[Indorsed]: Defendant's Exceptions to Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 28, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [109]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Order Allowing Defendant's Exceptions.**

There having been presented to the Court this day the exceptions of the defendant to the failure of the Court to make certain findings of act and conclusions of law requested by the defendant, and the exceptions of the defendant to certain findings of fact and conclusions of law made by the Court, and the Court being duly advised in the premises;

It is here and now ORDERED that said exceptions be, and they, and each of them, are hereby allowed.

Done in open court this 31st day of January, A. D., 1916.

JEREMIAH NETERER,

Judge.

Copy received Jan. 31, 1916.

CHARLES E. SHEPARD,

For Pltf.



[Indorsed]: Order Allowing Defendant's Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division Jan. 31, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [110]

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Stipulation Extending Time to March 1, 1916, to Prepare, etc., Proposed Bill of Exceptions.**

It is hereby stipulated and agreed by and between plaintiff and defendant, through their respective attorneys, that defendant may have up to and including the first day of March, 1916, in which to prepare, serve and file its proposed bill of exceptions herein.

Dated at Seattle, Washington, this 7th day of February, A. D., 1916.

CHARLES E. SHEPARD,  
Attorney for Plaintiff.

U. D. GNAGEY,  
HASTINGS & STEDMAN,  
Attorneys for Defendant.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 9, 1916. Frank L. Crosby, Clerk. By E. M. L. Deputy. [111]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Order Extending Time to March 1, 1916, to  
Prepare, etc., Proposed Bill of Exceptions.**

Upon stipulation of counsel, it is hereby ordered that defendant may have up to, and including, the first day of March, 1916, in which to prepare, serve and file its proposed bill of exceptions herein.

Done in open court this 9th day of February, A. D., 1916.

JEREMIAH NETERER,

Judge.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 9, 1916. Frank L. Crosby, Clerk. By E. M. L. Deputy. [112]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Order Allowing Withdrawal of Bill of Exceptions,  
etc.**

Now on this day this cause comes on for hearing on motion for Writ of Mandamus, and notice of settling Bill of Exceptions, the plaintiff appearing by Charles E. Shepard and the defendant by Hastings & Stedman, and U. D. Gnagey, whereupon the defendant states will petition for Writ of Error and ask Court to fix amount of cost bond and supersedeas bond. The Court fixes supersedeas bond at \$650.00 and cost bond at \$250.00. Defendant is allowed to withdraw original bill of exceptions, as lodged with clerk, to incorporate amendments.

Dated April 24, 1916.

Journal 5 Page 322. [113]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff.

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Notice of Settling Bill of Exceptions.**

To U. D. Gnagey, defendant's attorney, and to L.  
B. Stedman, of Counsel:

YOU WILL PLEASE TAKE NOTICE that the proposed amendments of the plaintiff to the bill of exceptions herein, which are herewith served on you, will be presented to the Court on April 24, 1916, at the opening of the court on that day, or as soon thereafter as counsel can be heard, and that I shall then and there move that same be allowed and inserted in the proposed bill of exceptions.

Dated April 20, 1916.

CHARLES E. SHEPARD,  
Attorney for Plaintiff.

[Indorsed]: Notice of Settling Bill of Exceptions.  
Filed in the U. S. District Court, Western Dist. of  
Washington, Northern Division. April 21, 1916.  
Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 1872.

FIRST NATIONAL BANK OF CENTRAL CITY,  
COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Defendant's Draft of Proposed Bill of Exceptions.**

Be it remembered that this cause came on regularly for trial on the 20th day of April, 1915, before the Honorable Jeremiah Neterer, Judge presiding, for trial by the Court without a jury, a jury having been expressly waived by the parties, plaintiff appearing by Charles E. Shepard, Esquire, its attorney, and defendant appearing by U. D. Gnagey, Esquire, its attorney, and Hastings & Stedman, of counsel, the following proceedings were had.

Plaintiff, through its attorney, Charles E. Shepard, Esq., was about to address the Court when U. D. Gnagey, Esq., attorney for defendant, stated to the Court that the original complaint had been demurred to, upon the ground that it did not state facts sufficient to constitute a cause of action, and that such demurrer was sustained by Judge Cornelius H. Hanford, then presiding over this court, and that plaintiff, refusing to plead further, suffered a judgment of dismissal in this court, which said

judgment of dismissal was affirmed by the United States Circuit Court of Appeals, and had not been reversed upon the records so far as counsel knew, and Mr. Gnagey stated to the Court that defendant objected to the proceedings upon the ground that the judgment of dismissal had never been reversed. Whereupon, the Court stated that the ruling would be reserved, and the testimony would go into the record, and the Court would dispose of the whole matter at once, to which ruling of the Court the defendant took an exception, and its exception was allowed. [115]

By consent of the Court, the proof of the allegations in paragraphs 8 and 9 of the first affirmative defense set forth in defendant's answer was postponed to be furnished by testimony taken on depositions within two weeks. Permission was given by the Court at the request of the defendant to correct minor errors in the answer.

Whereupon, plaintiff offered in evidence the deposition of H. H. Lake, taken at Central City, Colorado, on April 10, 1915, who testified as follows:

**Deposition of H. H. Lake, for Plaintiff.**

Testimony of H. H. LAKE, witness for plaintiff.

I am 54 years of age; reside at Central City, Colorado, and have been cashier of the First National Bank of Central City since August 31, 1904. The plaintiff bank was in possession of the indebtedness fund warrants referred to in this action when I became cashier and until they were delivered to its attorney for purpose of this suit. These warrants

(Deposition of H. H. Lake.)

appear in the bank-book's account as assets of the bank, which has been the owner of them for years. The bank's records show that the warrants were purchased as follows: on March 23, 1898, \$11,445.53; on June 30, 1898, \$5,500.00; on July 14, 1898, \$558.25; on July 15, 1898, \$5,250.00; on July 21, 1898, \$5,080.75. All of these warrants were purchased in the ordinary course of banking business, and the purchase price was paid in cash, and they have ever since stood upon the books of the bank as assets. Said warrants are now in possession of Charles E. Shepard, attorney for plaintiff, and for use in evidence. A list of the warrants owned by plaintiff is as follows:

No. 7, \$308.15; No. 9, \$487.00; No. 10, \$96.30; No. 29, \$500.00; No. 30, \$500.00; No. 31, \$500.00; No. 32, \$500.00; No. 41, \$500.00; No. 42, \$500.00; No. 49, \$500.00; No. 54, \$250.00; No. 55, \$250.00; No. 59, \$250.00; No. 60, \$250.00; No. 65, \$500.00; No. 66, \$500.00; No. 89, \$250.00; No. 90, \$500.00; No. 91, \$500.00; No. 92, \$500.00; No. 93, \$308.25; No. 100, \$250.00; No. 107, \$500.00; No. 108, \$500.00; No. 110, \$500.00; No. 111, \$500.00; No. 116, \$500.00; No. 117, \$500.00; No. 118, \$500.00; No. 119, \$500.00; No. 120, \$500.00; No. 121, \$500.00; No. 122, \$500.00; No. 123, \$500.00; No. 124, \$500.00; No. 128, \$500.00; No. 129, \$500.00; No. 130, \$500.00; No. 131, \$500.00; No. 132, \$500.00; No. 133, \$500.00; No. 135, \$525.53; No. 137, \$420.00; No. 142, \$500.00; No. 143, \$500.00; No. 144, 500.00; [116] No. 145, \$500.00; No. 146, \$380.00; No. 147, \$500.00; No. 148, \$236.50; No. 149, \$500.00;

(Deposition of H. H. Lake.)

No. 150, \$263.50; No. 151, \$500.00; No. 152, \$500.00; No. 153, \$500.00; No. 154, \$500.00; No. 155, \$500.00; No. 156, \$500.00; No. 157, \$500.00; No. 158, \$500.00; No. 159, \$500.00.

On cross-examination, the witness stated that no one besides the First National Bank of Central City had any interest in the warrants, and that the bank is the absolute owner of them, and that he knew of nothing further of interest to either party in this action.

Whereupon, plaintiff, through its attorney, Mr. Shepard, offered in evidence the warrants in suit in this action, aggregating \$13,952.80, the face of the warrants, which warrants were marked exhibit "A," and admitted in evidence in this cause. Objection was seasonably made by defendant, through Mr. Stedman, to the admission of these warrants in evidence, upon the ground that they were not properly endorsed to show title in plaintiff, which objection was overruled, and defendant was allowed an exception, and it was agreed by the Court and the parties that the objection should run to each and every warrant introduced and offered in evidence, and included in exhibit "A."

Whereupon, Mr. Shepard offered in evidence copy of the minutes of the City Council of Port Townsend on February 15, 16 and 17, 1898, or portions thereof, pertaining to the indebtedness fund warrant issue, which was identified as exhibit "B" of plaintiff. Objection to the introduction of a skeleton of the minutes was raised by Mr. Stedman, of counsel for



defendant, on the ground that a certified copy of the entire minutes should be introduced in evidence, and upon the ground that in the case of Perkins vs. Intermela, in the Circuit Court of Appeals, Judge Wolverton, in giving the decision, laid stress upon the fact that the meetings of the City Council had to be adjourned on account of press of other business; which objection was overruled by the Court. An exception was taken by defendant and allowed by the Court, and the complete and entire minutes were introduced in evidence and marked Plaintiff's Exhibit [117] "B," hereto attached.

Whereupon, plaintiff, through Mr. Shepard, referred the Court to the stipulation of facts signed by the parties, which is as follows:

*"In the District Court of the United States for the Western District of Washington, Northern Division.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

### STIPULATION OF FACTS.

For the purposes of the trial and of the record thereof in this cause and not otherwise, the parties, by their respective attorneys, hereby agree that the following facts pertinent to this action, and that

neither party shall be under necessity of adducing evidence of any fact herein stated. But each party reserves the right to object to the materiality or the relevancy of any such fact. And either party may offer at the trial any competent evidence of any other material or relevant fact at issue herein and not stated in this stipulation.

### I.

The parties are such corporations as they are pleaded to be in the Amended Complaint and the Answer and were such before and on the date when this action was begun.

### II.

On January 19, 1898, an action at law by the Bank of British Columbia, a corporation under the laws of the United Kingdom of Great Britain and Ireland, against the defendant herein, for recovery of alleged damages for breaches of alleged contracts consisting of Street Grade Warrants of the origin, character and terms hereinafter stated, was pending at issue in the Superior Court of Washington, in and for the County of Jefferson, that being the court of general civil jurisdiction in that county. There had been a general appearance by the defendant, and a waiver of a jury trial of the issues of fact. On said date, the Court by written findings and conclusions found the issues of fact and law in favor of the then plaintiff and on February 1, 1898, it entered judgment accordingly in favor of said plaintiff, Bank of British Columbia, and against said defendant City for eighteen thousand six hundred dollars, fifteen cents (\$18,600.15) and the costs of the action,

with interest at ten per cent per year from the date of the judgment.

### III.

On January 19, 1898, an action at law by the Manchester Savings Bank, a corporation under the laws of the State of New Hampshire, against the defendant herein, for the recovery of alleged damages consisting of Street Grade Warrants of the origin, character and terms hereinafter stated, for breaches of alleged contracts, was pending at issue in said Superior Court in and for said County of Jefferson. There had been a general appearance by the defendant and a waiver of a jury trial of the issues of fact. On said date, said Court by written findings of fact and conclusions of law found the issues of fact and of law in favor of the then plaintiff and on February 5, 1898, it entered judgment accordingly in favor of said Manchester Savings Bank and against said defendant City for seven thousand seven hundred eighty-eight dollars, [118] seventy-one cents (\$7,788.71) and the costs of the action with interest at ten per cent per year from the date of the judgment.

### IV.

Each of said judgments was rendered for breaches of alleged contracts of said City, which were so-called street grade warrants drawn on special improvement funds to be provided by special assessments on property improved and benefitted by such street improvements carried out by contractors pursuant to ordinance of said City, as alleged in the complaints set forth in the answer in this cause.

The local improvement districts were duly formed, the contracts awarded, the improvements made, and the warrants issued on such Funds and those which were in suit in said two actions came by indorsement and transfer to the possession and ownership of the respective plaintiffs; and the warrants were not paid in full and by their terms there was due on them to said plaintiffs the respective amounts adjudged, but the sums paid were from such special assessments, and not otherwise.

## V.

The following is the form of said special assessment or street grade warrants, and the individual warrants involved in said two suits differed only in number, date, amount and payee's name, to wit:

No. ——— City of Port Townsend W. T. ———  
A. D. 188—

By order of the City Council of ——— of ———, A. D. 188—, the Treasurer of the City of Port Townsend, Washington Territory; Pay to ———, or order, ——— Dollars, and charge the same to the account of ——— Street Improvement Fund. The City of Port Townsend hereby guarantees the payment of said sum of ——— Dollars with interest thereon at Ten per cent (10%) per annum payable semi-monthly.

\_\_\_\_\_  
Mayor of the City of Port Townsend.

## VI.

No contract, ordinance or resolution authorized the City of Port Townsend to guarantee the payment of said warrants, and said warrants were issued under the ordinance and contracts pleaded in

the complaints fully set forth in the defendant's answer herein. Said answer contains true copies of said complaints, and true copies of said ordinances and contracts.

## VII.

At about the same time the two actions just described were commenced which resulted in said judgments, sundry other actions, to wit, six in number were brought by other holders of similar special assessment or street grade warrants for street improvements in the City of Port Townsend against said city in said Superior Court, in each of which the city appeared and answered. Said warrants were in their origin, forms and legal relations identical with those in said two actions, with the exception that they were drawn on different street improvement funds and on the face of some there appeared no guaranty of payment by the city, and on the face of others there appeared a guaranty by the city for the payment of interest only, but as in the other cases, no contract, ordinance or resolution authorized the city or its officers to make such guaranty. All of said actions resulted in judgments against said city on the warrants in suit therein about [119] the same time, four of said judgments having been filed on February 1, 1898, and four on February 5, 1898. The total amount of judgments so entered against the city on February 1st and 5th was about \$67,000.00. The findings and conclusions in four of said causes, including said case of Bank of British Columbia, No. 1258, and the judgments therein, were signed by the Court on

January 19, 1898, but were not filed with the clerk till February 1, 1898; and the findings and conclusions in the four other cases, including said case of Manchester Savings Bank, No. 1538, were signed by the Court on January 20, 1898, and the judgments in said cases, including said case of Manchester Savings Bank, were signed by the Court on February 5, 1898, and filed with the clerk on said day, but the findings in such cases were not filed till the second day of February, 1898. Besides the said judgments so entered against the City on February 1st and 5th, 1898, there were default judgments entered against said City on similar street grade or special assessment warrants during the year 1898, amounting in all to about the sum of \$30,000.00. In none of the cases described in this paragraph did the City take an appeal to the Supreme Court of the State of Washington, except in the case of *Doxy v. Port Townsend*, reported in 21 Washington, 707, which had gone to judgment in the lower court by default, on Dec. 27, 1898.

#### VIII.

Negotiations between the city and the plaintiffs in the eight cases above mentioned and described looking to a settlement of said claimed liabilities were opened. The City Council, being its legislative and governing body under its charter, held a regular meeting on February 15, 1898, that being the third Tuesday in said month, according to Ordinance No. 585, entitled "An Ordinance fixing the time of meeting of the Common Council of the City of Port Townsend, Washington, and repealing Or-

dinance No. 470 and all other ordinances on that subject," passed by the Common Council of the City of Port Townsend, Washington, November 19, 1895, and approved by the Mayor, November 21, 1895, which said ordinance fixed the times of the regular meeting of said council on the first and third Tuesdays of each month, at the hour of eight o'clock from April to October, inclusive, and from December to March inclusive, at the hour of half-past seven o'clock. At the meeting so held on February 15, 1898, all the members of the said council and the Mayor and City Attorney (who was its law officer and adviser) were present. At said regular meeting under the head of "New Business" the clerk read notice of attorneys in street grade warrant cases. After the reading of such notices and transaction of other business the City Council took an adjournment of the meeting until three o'clock P. M. of the next day, without stating so far as the minutes of said meeting show, the object or purpose of the adjournment. The council met in pursuance of said adjournment when all the members were again present. At said adjourned meeting the said council discussed the matter of paying the street grade warrant judgments, and on that date submitted to the judgment creditors a proposition to pay their judgments against the city, in warrants for the full amount of each respective judgment, interest and costs, to be drawn on the "Indebtedness Fund" and to bear interest at six per cent (6%) instead of ten per cent (10%) per year which the judgments drew. After such discussion, the following resolution was passed

by the City Council, and it then adjourned to the next day.

“Whereas judgment has been duly entered in the Superior Court of the State of Washington, for Jefferson County, against the City of Port Townsend, in favor of the following named parties, for the following amounts respectively, to wit:

[120]

Merchants' Bank of Port Townsend .....	\$14,375.28	
Manchester Savings Bank..	7,788.71	[120]
Commercial Bank of Port Townsend .....	10,324.44	
John Berneson .....	4,587.33	
Bank of British Columbia..	18,600.15	
E. M. Johnson.....	1,812.23	
First National Bank of Port Townsend .....	7,625.00	
E. Heuschober .....	482.65	
Alonzo Elliott.....	1,400.00	(about)

Together with costs and interest from date of judgments at 10% per annum.

And whereas the said parties have duly presented the said claims under said judgments against the City to the City Council, for settlement and payment;

And whereas it is the opinion of the said Council that said claims are a just and legal obligation against the City of Port Townsend and should be satisfied and paid;

Now, therefore, be it resolved by the City Council of the City of Port Townsend that said claims and



judgments be and the same are hereby allowed and ordered paid as claims against the said City and that warrants be drawn in the usual form in favor of the said respective parties for the respective amounts of the said judgments, costs and interest, on the "Indebtedness Fund" of said City, which warrants shall be signed by the City Clerk and Mayor and with the city seal attached, and delivered to the said respective parties or their attorneys immediately upon the satisfaction of said judgments of record in the Superior Court aforesaid, that the above warrants shall draw interest at the rate of 6% per c. p. annum from date of same and until paid, and also that this resolution is upon the condition that all of said parties accept the conditions herein named on or before February 17" at 3 o'clock P. M."

IX.

Thereupon and on the next day the judgment creditors named in the resolution and there being represented, filed the following acceptance of the City's proposition made the day before and embodied in said resolution, viz.:

Port Townsend, Wash., Feby. 17, 1898.

To the Mayor and City Council of the City of Port Townsend.

Gentlemen:

We, the undersigned judgment creditors of the said City of Port Townsend, hereby agree to accept, and do hereby accept, the proposition of the said City and its Council, made on the 16th day of February, 1898, to satisfy and pay our respective judgments

against the said City by issuing warrants for the full amount of said judgments, interest and costs, said warrants to be drawn on the "Indebtedness Fund" of said City, and to bear interest from the date of their issue at the rate of six (6) per cent per annum; and hereby agree to cancel said judgments in full of record in the Superior Court of Jefferson County, Washington, upon the receipt of said warrants.

BANK OF BRITISH COLUMBIA OF  
VICTORIA, B. C.,  
FIRST NATIONAL BANK OF PORT  
TOWNSEND,

E. M. JOHNSON,  
EMIL HEUSCHOBBER.

By MORRIS. B. SACHS,

Attorney of Record in Said Causes for Said Judgment Creditors.

THE MERCHANTS BANK OF PORT  
TOWNSEND,

THE COMMERCIAL BANK OF PORT  
TOWNEND, [121]

JOHN BARNESON.

MANCHESTER SAVINGS BANK.

By W. W. FOLGER,

Attorney of Record in said Causes for Said Last Four Named Judgment Creditors.

ALONZO ELLIOTT.

By PRESTON, CARR, GILMAN, R. W.  
JENNINGS,

His Attorneys.

In pursuance of said resolution and acceptance the city officers on the next day issued "Indebtedness

Fund Warrants" all bearing date February 18, 1898, numbered from 2 to 159, both inclusive.

A copy of the minutes of the City Council at said three sessions, may be introduced at the trial hereof without production of the book of minutes or of the City Clerk as a witness.

VIII.

The following is a list of all the warrants issued by the City to pay for all the judgments entered as aforesaid, based on its alleged or supposed contingent liability on special improvement warrants:

Number.	Amount.	Payee.
2	\$1548.12	
3	500.00	
4	500.00	
5	500.00	
6	500.00	
7	308.15	
8	247.58	
9	487.00	
10	96.30	
11	500.00	
12	250.00	
13	250.00	
14	250.00	
15	250.00	
16	500.00	
17	500.00	
18	500.00	
19	500.00	
20	500.00	

Number.	Amount.	Payee.
21	500.00	
22	500.00	
23	500.00	
24	500.00	
25	500.00	
26	500.00	
27	250.00	
28	250.00	
29	500.00	
30	500.00	
31	500.00	
32	500.00	
33	500.00	
34	500.00	
35	500.00	
36	500.00	
37	500.00	
38	500.00	
39	500.00	
40	500.00	
41	500.00	
42	500.00	
43	500.00	[122]
44	500.00	
45	250.00	
46	125.00	
47	20.00	
48	605.00	
49	500.00	
50	440.00	
51	600.00	

Number.	Amount.	Payee.
52	600.00	
53	250.00	
54	250.00	
55	250.00	
56	250.00	
57	247.30	
58	252.70	
59	250.00	
60	250.00	
61	600.00	
62	500.00	
63	500.00	
64	120.00	
65	500.00	
66	500.00	
67	500.00	
68	500.00	
69	500.00	
70	500.00	
71	500.00	
72	500.00	
73	500.00	
74	500.00	
75	500.00	
76	500.00	
77	500.00	
78	500.00	
79	525.00	
80	25.00	
81	25.00	
82	25.00	

Number.	Amount.	Payee.
83	25.00	
84	25.00	
85	25.00	
86	25.00	
87	25.00	
88	25.00	
89	250.00	
90	500.00	
91	500.00	
92	500.00	
93	308.25	
94	691.75	
95	500.00	
96	500.00	
97	500.00	
98	500.00	
99	250.00	
100	250.00	
101	500.00	
102	500.00	
103	500.00	
104	500.00	
105	500.00	
106	500.00	
107	500.00	
108	500.00	[123]
109	500.00	
110	500.00	
111	500.00	
112	500.00	

Number.	Amount.	Payee.
113	500.00	
114	500.00	
115	500.00	
116	500.00	
117	500.00	
118	500.00	
119	500.00	
120	500.00	
121	500.00	
122	500.00	
123	500.00	
124	500.00	
125	500.00	
126	500.00	
127	500.00	
128	500.00	
129	500.00	
130	500.00	
131	500.00	
132	500.00	
133	500.00	
134	434.57	
135	525.53	
136	15.12	
137	420.00	
138	500.00	
139	471.00	
140	373.44	
141	607.30	
142	300.00	
143	500.00	

Number.	Amount.	Payee.
144	500.00	
145	500.00	
146	380.00	
147	500.00	
148	236.50	
149	300.00	
150	263.50	
151	500.00	
152	500.00	
153	500.00	
154	500.00	
155	500.00	
156	500.00	
157	500.00	
158	500.00	
159	509.30	

## XI.

All of said warrants were inscribed on engraved blanks of the City of Port Townsend, signed by persons who were, on their dates, the Mayor and the City Clerk of the City of Port Townsend, marked on their face in red ink "Indebtedness Fund," and the following is the form of each warrant:

\$——. Port Townsend, Wash., ——, No. ——.

By order of CITY COUNCIL ——, A. D. 18——, of the CITY OF PORT TOWNSEND, WASH, the Treasurer of said City will pay —— or order —— Dollars. For pt. satisfaction of ~~your~~ judgment, case, ~~Bank of British Columbia~~ vs. City, with interest at



six per cent [124] per annum.

“Indebtedness Fund.”

D. H. HILL,  
Mayor of the City of Port Townsend.  
AUGUST DUDDENHAUSEN,  
City Clerk.

## XII.

The warrants Nos. 29, 30, 31, 32, 41, 42, 54, 55, 59, 65, 66, 89, 90, 91, 92, 93, 107, 108, 109, 111, 121, 122, 123, 124, 135, 137, 147 and 148 were all presented to the City Treasurer on February 18, 1898, and payment demanded, and he then refused payment and stamped each: “Presented February 18, 1898, not paid for want of funds” and signed “John Sichenbaum, City Treasurer,” and Nos. 116–120, 128–133, 142–146, all numbers inclusive, and 149, were so presented and refusal dated “February 19, 1898”; and said warrants in this sentence enumerated were in the ordinary course of the plaintiff’s business assigned and transferred to it and have ever since then been owned by it.

## XIII.

Nothing has been paid on any of said warrants. Warrant No. 1 of said series was not issued for any indebtedness growing out of any street improvement and was paid before this action was begun. Warrant No. 2 was issued to Alonzo Elliott in payment of a judgment against the city on a street improvement warrant and has been paid in pursuance of a judgment of this Court in the case of David Perkins v. Charles L. Intermela, Treasurer, since this action

was begun. Nothing has been paid on any of the other warrants in said list above enumerated, nor call made. Said judgment in Perkins v. Intermela amounted with interest and costs to \$3,467.63.

## XIV.

Since the issue of said warrants above listed, the defendant has levied taxes for the payment of indebtedness from the Indebtedness Fund of said city in pursuance of Chapter 34 of the Session Laws of the Legislature passed at the session of 1897, as follows:

In October, 1899, 1/10 mill on the dollar upon a property assessment of \$1,532,036.00.

In September, 1900, 4/10 mill on the dollar upon a property assessment of \$1,161,700.00.

In October, 1901, 1 55/100 mill on the dollar upon a property assessment of \$1,067,932.00.

In October, 1902, 1 55/100 mill on the dollar upon a property assessment of \$855,870.00.

In October, 1903, 1 55/100 mill on the dollar upon a property assessment of \$869,973.00.

In October, 1904, 1 mill on the dollar upon a property assessment of \$936,314.00.

In October, 1905, 1 mill on the dollar upon a property assessment of \$960,967.00.

In October, 1906, 1 50/100 mill on the dollar upon a property assessment of \$1,030,480.00.

In October, 1907, 2 mills on the dollar upon a property assessment of \$965,160.00. [125]

In October, 1908, 1 mill on the dollar upon a property assessment of \$1,291,142.00.

No levy for the payment of indebtedness from the

Indebtedness Fund, under said statute or otherwise, has been made since the levy of 1908.

Said Chapter 84 of the Session Laws of 1897 may be treated as a matter of fact before the Court the same as if herein specifically set out.

XV.

There have been realized from delinquent taxes for 1896 and prior years, from time to time, aggregating to this time not less than \$38,000.00.

The following is a list by years from 1898 to 1913 inclusive, of the assessed valuation of Port Townsend property, its levy for the Indebtedness Fund when any such levy was made, and the tax charged against the property for such levy :

Year.	Assessed Valuation.	Levy for Gen. Indebtedness.	Computed Amount Realized.
1898	\$1,516,567.00	.1	\$151.66
1899	1,466,910.00	.1	146.69
1900	1,161,685.00	.4	464.67
1901	1,172,071.00	1.55	1816.71
1902	855,870.00	1.55	1326.60
1903	869,973.00	1.55	1348.46
1904	936,214.00	1.0	936.21
1905	960,697.00	1.0	960.70
1906	1,030,480.00	1.5	1545.72
1907	1,181,323.00	2.0	2362.65
1908	1,290,942.00	1.0	1290.94
1909	1,292,404.00		
1910	1,317,201.00		
1911	1,364,936.00		
1912	1,365,235.00		
1913	1,391,639.00		

## XVI.

The following is a list by years of the delinquent taxes collected from 1898 to 1905, inclusive, on Port Townsend property, under the tax-rolls for the years 1891 to 1897, inclusive:

Date of Roll.		1898.	1899.	1901.	1902.
Del. Tax roll	1891	\$ 21.23	\$ 136.10		\$ 689.77
" " "	1892	45.97	250.48	\$ 21.03	924.93
" " "	1893	124.67	691.21	170.04	2211.86
" " "	1894	157.70	393.27	227.99	1059.12
" " "	1895	597.46	745.70	654.81	685.75
" " "	1896	645.23	610.01	458.99	212.46
" " "	1897	5627.21	712.76		
		<u>\$7219.47</u>	<u>\$3539.55</u>	<u>\$1527.86</u>	<u>\$5783.89</u>
		1903.	1904.	1905.	
" " "	1891	\$1232.84	\$1860.02	\$ 925.04	
" " "	1892	1518.16	2356.82	2439.51	
" " "	1893	3333.39	1974.69	902.16	
" " "	1894	1588.02	1027.10	1109.73	
" " "	1895	3286.48			
" " "	1896	2633.74	277.01	107.19	
		<u>\$13592.63</u>	<u>\$7495.64</u>	<u>\$5483.63</u>	

[126]

## XVII.

On October 4, 1898, the City Treasurer transferred on his books Five Hundred Ten Dollars Nineteen Cents (\$510.19) from the Indebtedness Fund to the Sinking Fund. The Sinking Fund is the fund appropriated to the redemption of bonds of the City.

On May 18th, 1909, the City Treasurer transferred on his books Twenty-five Hundred Dollars (2500.00) from the Indebtedness Fund to the Current Expense Fund.

On Feb. 15th, 1910, the City Treasurer transferred on his books Seven Hundred Eighty-seven Dollars

Forty-one Cents (\$787.41) from the Indebtedness Fund to the Current Expense Fund.

All of these transfers were made under orders by the City Council to make them, and the sums so transferred have been expended since said dates in payment of charges against the funds to which they were transferred, and no part of them was expended on any charges against the Indebtedness Fund. The sum of \$527.07 now stands on the Treasurer's books to the credit of the Indebtedness Fund, and is in his hands.

### XVIII.

From January, 1899, when a change in city officers occurred, the city refused to allow any more default judgments to be taken against it on any of the street grade or special assessment warrants of the kind and character hereinbefore described, of which there was still a considerable quantity and it contested all such suits.

### XIX.

During 1897 and 1898 and when said judgments above mentioned were entered and the Indebtedness Fund Warrants issued in payment of them, the city was indebted beyond its constitutional limit of indebtedness, exclusive of said warrants and of any indebtedness for supplying the city with water, artificial light or sewers, and it did not own or control any works for supplying water, light or sewers and the total assets of the city including all uncollected taxes, penalties and interest due the city, money from all sources and cash on hand, were not sufficient

during the years 1897 and 1898 to bring the city within its constitutional limit of indebtedness.

### XX.

The assent of three-fifths of the voters of the city, voting at any election has not been had at any time for the purpose of incurring any part of said street grade warrant indebtedness, nor any part of the Indebtedness Fund warrants issued in payment of said judgments, nor has it been otherwise authorized except as hereinabove set forth.

### XXI.

Nothing stated in this stipulation is to be deemed an admission by either party of relevancy, materiality or legal effect of any fact stated herein; but the facts stated herein are such as the respective parties can agree on and desire to lay before the Court without involving an admission by the other party of the legal effect thereof.

### XXII.

All figures of tax levies and corrections herein are subject to an accounting under orders of the Court before entry of final judgment, in case the decision of the Court on the merits shall be in favor of the plaintiff. [127]

### XXIII.

On the first day of February, 1898, when the act of 1897 creating the Indebtedness Fund went into effect, the city had a large amount of delinquent taxes outstanding for 1891, 1892, 1893 and 1894, which the city treasurer afterwards proceeded to collect, and had also delinquent taxes for 1895 and 1896 outstand-

ing. The city collected its own taxes for 1894 and previous years, but by an act entitled "An Act to provide for the assessment and collection of taxes in municipal corporations of the third and fourth class in the State of Washington, and declaring an emergency," approved March 9, 1893, and by city ordinance No. 569, entitled "An Ordinance relating to the assessment and collection of taxes in the City of Port Townsend," approved March 20, 1895, the County Treasurer of Jefferson County was made the collector of city taxes for 1895 and subsequent years. In 1902 the County Treasurer, according to law, foreclosed the lien of the state and county taxes for 1895. The foreclosure proceedings resulted in the forfeiture of a large amount of property to the county, and the deed for the same to the county was filed with the County Auditor on January 12, 1903. At said time the delinquent taxes of the city that remained uncollected for 1895 amounted to \$3,450.12. Afterwards the County Treasurer foreclosed the lien of the state, county and city taxes for 1896, which resulted in the forfeiture of property to the county and the deed to the county for said property was executed and filed with the auditor of said county on the 22d day of June, 1904; that at the time the said property was so forfeited to the county, the delinquent city taxes for 1896, that remained uncollected, amounted to \$4,284.79.

#### XXIV.

All warrants payable out of the Indebtedness Fund according to the act of 1897 creating said fund prior to warrant No. 3 of the series drawn on the said

Indebtedness Fund have been paid and said warrant No. 3 of said series stands next in order of payment. There is only one series of warrants drawn on the Indebtedness Fund.

#### XXV.

On February 1, 1898, there were the following amounts of warrants outstanding and unpaid on the different funds mentioned in Section 9 of Ordinance No. 722, to wit: On the Fire & Water Fund, the sum of \$891.35; on the Road Fund, the sum of \$2,016.27; on the Light Fund, the sum of \$6,680.25; on the General Expense Fund the sum of \$31,150.70, the several sums herein given representing the face value of said warrants.

#### XXVI.

Besides the foregoing warrants there were outstanding certain other warrants, amounting in all, principal and interest, on the 1st day of October, 1895, to the sum of \$53,300.00, \$29,100 of which were exchanged for municipal bonds issued by authority of a popular election validating said \$53,300 and the remainder of said warrants with interest became payable out of the Indebtedness Fund according to the act of 1897 creating said fund.

#### XXVII.

Nothing herein shall be taken as a waiver of any of the affirmative defenses set forth in the answer,



nor preclude the defendant from offering evidence in support thereof.

April 28, 1915.

CHARLES E. SHEPARD,  
Plaintiff's Attorney.  
U. D. GNAGEY,  
HASTINGS & STEDMAN,  
Attorneys for Defts."

Defendant introduced in evidence a certified copy of Section 9 of Ordinance No. 722 of the City of Port Townsend, as follows: [128]

CERTIFIED COPY OF SECTION 9 OF ORDINANCE NO. 722.

Sec. 9. It shall be the duty of the City Treasurer to turn into the Indebtedness Fund all moneys derived by the City from the County of Jefferson for its share of the proceeds of the sale of any county, property, and all moneys from city taxes, penalty and interest, excepting moneys collected for the payment of any city bonds, and excepting the tax levies for the three preceding years, which he shall segregate, immediately upon receipt into the respective funds of the City, according to the respective levies therefor, until all the legal outstanding claims against the "Indebtedness Fund" of the city shall have paid *paid*, but the City Treasurer shall pay no indebtedness fund warrant, excepting the "general expense," "fire and water," "light" and "road" fund warrants without the special order of the city council.

State of Washington,  
County of Jefferson,—ss.

I, George Anderson, City Clerk of the City of Port Townsend, Washington, do hereby certify that the foregoing is a full, true and correct copy of Section 9 of Ordinance No. 722, entitled "An Ordinance defining the duties of the City Treasurer of the City of Port Townsend," passed by the City Council on Sep. 4, 1906, and approved by the Mayor Sep. 4, 1906, as the same appears of record in my office.

Witness my hand and the seal of said City this 28th day of April, 1916.

[Seal]

GEORGE ANDERSON,  
City Clerk. [129]

Whereupon plaintiff rested.

Thereupon the following testimony was introduced in behalf of defendant:

**Deposition of A. R. Coleman, for Defendant.**

A. R. COLEMAN, Esq., a witness for defendant, was called to the witness-stand, whereupon Mr. Shepard, attorney for plaintiff, objected to the taking of any evidence under the answer to the amended complaint, upon the ground that said answer did not state facts sufficient to constitute a defense in any of the affirmative defenses set up, and upon the ground that the judgments in the Superior Court of Jefferson County were *res adjudicata* against the City of Port Townsend, as between it and the plaintiff as to any matters pleaded in the defense in this action in the answer to the amended complaint. Thereupon, the

(Deposition of A. R. Coleman.)

Court stated he would hear the evidence and reserve his ruling and dispose of the objection in the final determination of the case.

Mr. Coleman testified as follows in behalf of defendant: I have practiced my profession as attorney at law for over forty years, and have resided in the City of Port Townsend for nearly 28 years, and was in Port Townsend in the Spring of 1898, and was there practicing ever since the summer of '87. I remember advising with the members of the City Council in the winter of 1898, with reference to the street grade warrants.

(Objection was made by plaintiff, through its attorney, Mr. Shepard, to the statement by the witness of any advice given orally to the City Council, or any of its members, as incompetent against the plaintiff, the purchaser of the warrants in the market after the official action had been taken by the City Council in issuing the warrants in satisfaction of judgment.

The Court allowed the testimony to be given, reserving his ruling.)

WITNESS (Continues.) Before the issuance of the indebtedness fund warrants in payment of judgments that had been rendered against the city for more than \$60,000, I examined the record of the judgments for the purpose of advising the City Council. I cannot now recall the names of the judgment creditors but I might remember the names if I had them. I think they—I am [130] not sure about the Bank of British Columbia; it was talked about and I think

(Deposition of A. R. Coleman.)

it was one of those to which my advice applied; the First National Bank of Port Townsend was one; The Commercial Bank of Port Townsend was another; the Merchants Bank of Port Townsend, another; I do not remember the Manchester Savings Bank. The Mayor and several of the councilmen requested me to meet them at the city hall one afternoon, not at a meeting of the City Council, but as members of the City Council they wanted to consult me and requested my advice with reference to appealing the cases in which judgment had been rendered against the city, as to whether they should appeal them or pay them off. I asked for a couple of days in which to investigate, and in the meantime I examined the record and met the Mayor and members of the Council, and gave them my advice about the cases and about the probabilities of winning the cases on appeal, to the effect that I thought all the cases could be reversed, and that the city could beat all of the cases. I examined the case of German-American Bank against the City of Spokane, 17 Wash., that I knew of before, but examined it pretty thoroughly, and upon that decision I based my opinion that I gave to the Mayor and members of the Council. I told them the Supreme Court had decided a case that I thought would be decisive in their cases. I am not sure that I told them the name of the case, but that the Supreme Court had rendered a decision which I thought was decisive in their cases. The decision had been rendered in the summer of 1897, and this conference that I had with the Mayor and

(Deposition of A. R. Coleman.)

Council was early in 1898, and my advise to them referred to the judgments that had been rendered against the city on the street grade warrants and the indebtedness fund warrants had not been issued in payment of such judgments.

On cross-examination, the witness testified: I cannot fix the date positive of said conference. I did not charge my mind with the date, but it was within the time for appeal from the judgments on the street grade warrants, and the Mayor and members of the Council wished me to advise them as to whether they should [131] issue indebtedness fund warrants or appeal from the judgments. My impression is that all of the members of the council were present. If they were not all present, only one or two was absent. There were no other lawyers present. The Mayor and members of the Council spoke of the City Attorney, and stated that they had talked the matter over with him, but I do not know of anyone else with whom they talked. They stated that the City Attorney had advised them to pay the judgment, but they were not satisfied with his decision. They said they had no confidence in the City Attorney. They did not want the City Attorney to know that they were consulting with me. I do not know that I mentioned the case of the German-American Bank against Spokane, but that is the case I had in mind when I gave them my advice. I had in mind the case of the Bank of British Columbia against the City of Port Townsend. I think that is mentioned in the German-American Bank case in 17th Washington, and I think the judg-

(Deposition of A. R. Coleman.)

ment in the Bank of British Columbia case against the City of Port Townsend had been recently taken. My advice was that they had better appeal from these judgments. I gave no written opinion, but my opinion was rendered in an oral discussion as is usual between a lawyer and a client. They asked me what would be my fee and they declined to employ me on the terms I offered to take the case. I charged them for the advice I gave them, and my charge was paid.

On redirect examination, the witness testified: I never discussed the legal proposition with Mr. Plumley, the City Attorney, as the Mayor and Councilmen did not wish him to know that they were taking other advice, so, of course I did not tell him.

**Deposition of George Anderson, for Defendant.**

GEORGE ANDERSON, a witness called in behalf of defendant, testified as follows: My name is George Anderson. I am City Clerk of the City of Port Townsend, and have been such between 8 and 9 years, and was appointed in December, 1906. The book which is shown to me is the record of council meetings from 1895 to 1899, and, as City Clerk, I attended the meetings of the council, as [132] part of my duties is to make minutes of the proceedings, record the proceedings and keep a record of the meetings, and I have been doing that ever since I have been City Clerk. I know how long it takes a city council on the average to transact the business at a meeting.

(Deposition of George Anderson.)

(Mr. Shepard objected to the testimony as to the average length of council meetings, as being incompetent and immaterial, and the objection was sustained by the Court and exception allowed.)

By reference to the minutes in the minute-book of the council meetings, the meeting held on February 15, 1898, without the succeeding days, occupies two pages and a half, and it would be a short council meeting.

(Mr. Shepard objected to the statement that it would be a short meeting, upon the ground that it is incompetent, immaterial and irrelevant. The Court overruled the objection to which an exception was allowed to plaintiff.)

The witness was asked how the meetings then compared with the meetings of the present council, so far as length was concerned, to which objection was made by plaintiff, and the objection was sustained, and an exception allowed to defendant.

The minutes of February 15th, 16th and 17th were introduced for the inspection of the Court, and a copy substituted as is shown in exhibit "B" hereinabove referred to.

The witness Anderson proceeding, stated: As City Clerk I am aware of the existence of certain warrants outstanding against the City of Port Townsend, known as indebtedness fund warrants. The city has done nothing as regards providing for the payment of these warrants, and nothing has been done except when suits have been commenced. Ac-

(Deposition of George Anderson.)

tion has been taken sustaining the City Attorney, but nothing has been done regarding the payment of these warrants. It is my business to prepare statements to the city of its outstanding liabilities for bond issues and other purposes, and there was a statement made for the purpose of refunding bonds about 3 years ago. In making the tax levies, the City Council of the City of Port Townsend did not take into consideration these indebtedness fund warrants. [133]

(To such statement, plaintiff objected, and moved that the answer be stricken, but the answer was allowed to stand, and an exception allowed to plaintiff.)

**Deposition of August Duddenhausen, for Defendant.**

AUGUST DUDDENHAUSEN, a witness in behalf of defendant, testified as follows: My name is August Duddenhausen, I was City Clerk of the City of Port Townsend in February, 1898, having taken office in the fall of 1896 in September, to serve an unexpired term, and was elected in January as City Clerk. The minutes of February 15, 1898, are in my handwriting. The minutes for February 15th constituting 2½ to 3 pages, not quite 2½ pages. I cannot particularly recollect whether that meeting was a long or a short one, but I remember we had 3 or 4 meetings rapidly following, because there were several lawyers in Port Townsend at that time, one from Fairhaven and one from Seattle representing the Victoria Bank, and others, and the City Council and Mayor tried to get the best conditions



(Deposition of August Duddenhausen.)

from the attorneys and for that reason meetings were adjourned. They were not ready to take final action; that is about it.

Q. How many pages did the minutes of February 15, 1898, occupy?

A. Not quite two and one-half pages.

Q. Judging from the minutes and your recollection was that a long or a short meeting?

(Mr. Shepard objected to the question as immaterial. Objection overruled. Exception allowed.)

A. Judging from the minutes and my recollection it was rather a short meeting, probably lasting an hour and a half. Our meetings at that time were about two hours and a half, if I recollect rightly. It was a little shorter than usual. I say that judging from the minutes and from my recollection. I know it was put off. I think I remember at least that the meetings were adjourned because the council were not ready to act, that is about it. I heard most of Mr. Coleman's testimony in regard to the meeting he had with the members of the council. I was City clerk at the time referred to. I was told in the morning of that day that the members of the City Council and the Mayor would come to my office, but because my room was small and became crowded we went into the City Treasurer's office which was [134] larger, and when they went out to go across the hall I asked whether I should go along. It was not a regular council meeting, and one member of the council said, "Why certainly come along, but

(Deposition of August Duddenhausen.)

you need not take any minutes." There were five or six councilmen present, the membership of the council being seven. The Mayor, Dan Hill, was there, and Tom Tanner, Frank Hastings and I think Frank Plummer and Mr. Oliver; that is all I recollect, but I am pretty certain they were nearly all there. I was there when Mr. Coleman gave them his advice.

(Mr. Shepard objected to any statement as to what occurred, because a private meeting of that kind is entirely immaterial to the issues. Objection overruled. Exception allowed.)

In going across the hall to the City Treasurer's office I met the City Attorney.

Q. Did he say anything?

(Mr. Shepard objected to it because private conversation between the City Clerk and the City Attorney was not admissible, to which objection the Court answered, "I will let it go in the record. I don't see now the materiality of it" Objection overruled. Exception allowed.)

A. I remember now when we crossed the hall the City Attorney, Mr. Plumley, after three or four councilmen had gone in and just as I was going in, stopped me and asked if it was an official council meeting and I answered I understood it was not, to which he said, "If it is not I won't be present," and I said "I don't know but I was told it would not be. I am not to take any minutes." So I went into the room and the Mayor laughed about Mr. Plumley stopping me and said they did not want Mr. Plumley

(Deposition of August Duddenhausen.)

there; that they had no confidence in him and that is the reason they engaged Mr. Coleman.

(Mr. Shepard moved to strike out the statement as to what the Mayor said.

The COURT.—Let it stand in the record.

To which Mr. Shepard excepted and the exception was granted.)

On cross-examination, the witness testified, upon interrogation by Mr. Shepard, as follows: I will be 75 years of age the 15th of next June. I have known Mr. Coleman ever since I came to Port Townsend, having met him the week after I arrived in November, [135] 1888. In 1898, Mr. Coleman was the leading lawyer of Port Townsend, and a leading citizen there. I kept the minutes of the council meetings during all the term of my office, and they are written in the minute-book in my handwriting. The length of the minutes has some relation to the length of the meeting, but not always, because sometimes the matter discussed might not take five minutes, and it might take a much longer time to write it out. When there was a debate over a motion, I did not put down the debate in the minutes, but simply that the motion or resolution was made and whether it was carried or not, but the council meetings of Port Townsend at that time were well guarded schemes. The pages in the minutes would very nearly indicate the length of the meeting, unless there was something particular in the contents that would explain why the pages, number and time would not agree. I cannot judge from

(Deposition of August Duddenhausen.)

the length of the minutes, at any one meeting, absolutely whether it was a long or a short meeting, but the contents of the minutes would have much to do with it.

**Deposition of J. J. Bishop, for Defendant.**

J. J. BISHOP, witness called in behalf of the defendant, testified, upon interrogatorion by Mr. Gnagey, as follows: I am County Clerk of Jefferson County, and have been since January 9, 1916, and as such have charge of the records of that office. The book shown me is a court minute-book, which was turned over to me as County Clerk. I find a reference therein to the case of the Bank of British Columbia against the City of Port Townsend, and the Manchester Savings Bank against the City. On page 4 is a record of the case of the Bank of British Columbia against the City of Port Townsend, No. 1258; 1259, Johnson v. City of Port Townsend; 1260, First National Bank v. City of Port Townsend; 1261 Emil Heuschober v. City of Port Townsend, (afterwards changed to Shuber); 1536, Merchants Bank v. City of Port Townsend; 1537, Commercial Bank v. City of Port Townsend; 1538, The Manchester Savings Bank v. City of Port Townsend; 1539, John Barnison, as receiver, v. City of Port Townsend; all occurring on the date line of Saturday December 8, 1897. The record does [136] not show whether it was in the forenoon or afternoon.

(This record of the work transacted on the 8th

(Deposition of J. J. Bishop.)

day of December, 1897, as shown by the minute-book, was offered in evidence, to which objection was made as immaterial, and upon the ground that the proceedings were merged in the judgments, which objection was overruled by the Court and an exception allowed to plaintiff.)

On cross-examination by Mr. Shepard, the witness testified: I haven't any of the files of those cases with me.

Being recalled by plaintiff and interrogated by Mr. Gnagey, the witness testified: These are the files pertaining to my office as County Clerk.

(And the paper beginning "In the case of the Bank of British Columbia against the City of Port Townsend," was introduced in evidence, the Court reserving his ruling thereon, and marked "Defendant's Exhibit 1," and attached to this bill of exceptions.)

The amended answer and the reply in the case of Manchester Savings Bank vs. City of Port Townsend were introduced in evidence, the Court reserving his ruling on objection by plaintiff in cause No. 1558, and marked "Defendant's Exhibit 2."

**Deposition of U. D. Gnagey, for Defendant.**

U. D. GNAGEY, called as a witness in behalf of defendant, upon interrogation by Mr. Stedman, testified as follows: I am chief counsel for the defendant in this case, and City Attorney of Port Townsend, and have just started on my seventh term as City Attorney of one year each. I was a practicing at-

(Deposition of U. D. Gnagey.)

torney and also doing stenographic work and typewriting in the fall of 1897 and winter of 1898. I did some stenographic work in drawing the findings in these warrant cases. At that time, the case of German-American Savings Bank vs. City of Spokane, reported in 17 Wash. pg. 315, and decided on June 6, 1897, was generally known and discussed at least among some of the lawyers of Port Townsend. One of them was Mr. Telger, who was counsel or one of the attorneys for the Manchester Savings Bank, and I am sure it was known also to Mr. Plumley, the City Attorney, as my recollection is that I talked with Mr. Plumley and Mr. Telger just as attorneys, but in no official capacity, about the case. I would not say it was discussed before the City Council at that time.

On cross-examination by Mr. Shepard, the witness testified: [137] I came to Port Townsend about the 4th of August, 1889, and was admitted to practice in the summer of 1892, but I did not engage in practice at once. I was in practice in 1897 and 1898, and also did some court reporting, and did some work on these cases in typewriting. I was not connected with the cases in any way as attorney. I have been City Attorney for several years, and have been deeply interested in contesting these cases.

Whereupon defendant rested, and the following occurred on plaintiff's rebuttal:

Mr. Shepard requested counsel for the City to admit that the case of the Bank of British Columbia vs. Spokane, in which judgment was taken on or

(Deposition of U. D. Gnagey.)

about the first day of February, 1898, was the same case that went to the Supreme Court, at a previous hearing of said cause, and was reported in Vol. 16 Wash. pg. 460, and Mr. Gnagey, in behalf of the City, admitted the facts but objected to the materiality and relevancy thereof under the pleadings. The Court reserved its ruling. Upon objection by Mr. Stedman that defendant did not wish to be in the position of denying what was known to be a fact, he objected to the relevancy inasmuch as there was no mention in the pleadings of such fact. Whereupon, Mr. Shepard, counsel for plaintiff, requested permission to set the matter up in reply, and, upon objection by Mr. Stedman, upon the ground that the reply should not be amended after waiting 2½ years, the Court allowed the amendment to be made, and gave the defendant an exception. Whereupon, Mr. Shepard stated that he would prepare a formal reply, pleading that fact as *res adjudicata* and as establishing the law of the case. Whereupon the plaintiff rested.

**Deposition of George Anderson, for Defendant  
(Recalled).**

GEORGE ANDERSON, whose deposition was taken upon stipulation of the parties, called in behalf of the defendant, testified as follows. (Recalled): I am the City Clerk of the City of Port Townsend; the book, which I now produce, and marked "Ledger B" is the ledger kept in the City Clerk's office, and is a record [138] of all the

(Deposition of George Anderson.)

transactions of the city beginning January 1, 1884. It contains the records of warrants issued from time to time on various funds of the city and shows by the figures and footings the amounts outstanding against those funds from time to time, after deducting warrants paid and cancelled. By the entries on page 35 shows that the amounts outstanding on Jan. 1, 1897, against the Fire and Water Fund was \$7,776.34, and on Jan. 1, 1898, outstanding against the same Fund \$9,239.35; on Feb. 1 1898, \$8,659.35. On Jan. 1, 1897, against the Road Fund there stood \$876.65, and on the Light Fund, \$7,880.69, and on the General Expense Fund, \$33,321.69 and on Jan. 1, 1898, there were the following amounts against the same fund,—On the Road Fund there was \$2,245.91. On the Light Fund the sum of \$6,826.65 On the General Expense Fund, \$31,442.87. On Feb. 1, 1898, there were against these same Funds the following amounts:—On the Road Fund, \$1,926.27. On the Light Fund, \$6,530.66. On the General Expense Fund, \$31,421.35. These amounts did not differ greatly from January 1, 1897, to March 1, 1898. I have the Treasurer's register of warrants and the warrant books, which show the total amount of the street grade warrants. From Jan. 1, 1888, to Jan. 1, 1893, there were issued \$98,981.50. Prior to Jan. 1, 1898, there were paid \$26,073.01, leaving outstanding from Jan. 1, 1893, \$72,908.40. These street grade warrants were issued during the years 1888, 1889, 1890, 1891 and 1892, and the figures I have given represented the face of the warrants without the addi-



(Deposition of George Anderson.)

tion of any interest. These warrants, with interest added up to Feb. 1, 1898, amounted approximately to \$130,000. I have the books in the Treasurer's office showing the amount of bonds outstanding during the years 1897 and 1898. The first issue was in 1891, of \$85,000, and in 1895, of \$29,100. The assessed valuation of the City of Port Townsend for 1897, was \$1,341,426. The total indebtedness of the city on all funds, including the bonds during the years 1897 and 1898, as shown by the records, was over \$200,000.

On cross-examination by Mr. Shepard, the witness testified: [139] I mean that there was only a small amount over \$200,000 of the total indebtedness. The bond issues were authorized by popular vote of the city. The assets of the city, by way of uncollected taxes on real estate and on real estate bid in for taxes and other assets of the city, were for delinquent taxes for 1891, 1892, 1893 and 1894, and were \$49,373.36, and the other assets in 1897 and 1898 were cash on hand, \$4,350.96 on Jan. 1, 1897; on Jan. 1, 1898, \$7,703.70. The cash ran about the same during the year. The value of the city hall on that date was approximately \$40,000. Since 1898, the City of Port Townsend has not increased its current expense indebtedness, and it has reduced its debt slightly,—about \$40,000, in warrants, exclusive of interest, and the city has paid its general expense and current expense warrants, Fire and Water and Road and Light Warrants, except a small amount of those warrants still outstanding. Those warrants have been paid from current expense and delinquent taxes and pro-

(Deposition of George Anderson.)

ceeds of the sale of county property. It has not paid anything on the indebtedness warrants, except Warrant #2 issued in payment of judgment, and Warrants Nos. 1 and 160, both small, which were not for judgments. The State Examining Board has lately made an appraisalment of the city's assets. I have their appraisalment officially signed and returned by them (which said appraisalment was offered in evidence by the plaintiff, giving the assets and liabilities of the city as of December 18, 1911, which is as follows):

Mr. Gnagey objected to the introduction of that part of said appraisalment and to each and every item thereof referring to

“Real Estate and Fixtures, City Hall, pg. 63 .....	\$61,400.00
“Fire Department, pg. 62.....	8,819.00
“Police Department, pg. 62.....	316.00
“Engineer's Department (pg. 62).....	149.00
Street Department, pg. 63.....	1,191.00

on the ground that the said items are and each and every one thereof is irrelevant and immaterial.

(Objection overruled and exception allowed.)

“ASSETS AND LIABILITIES OF CITY.

ASSETS.

Real Estate and Fixtures, City Hall, pg. 63 .....	\$61,400.00
Fire Department, pg. 62.....	8,819.00
Police Department, pg. 62.....	316.00
Engineer's Department (page 62).....	149.00

(Deposition of George Anderson.)

Street Department (page 63).....	1,191.00
Uncollected Taxes .....	3,687.95
Cash Current Expense Fund.....	1,971.09
Cash Indebtedness Fund .....	309.96
Cash Interest Fund—1st issue.....	1,378.56
Cash Interest Fund—2d issue.....	815.98
Cash Public Library Fund.....	52.22
	<hr/>
	\$80,091.36

[140]

LIABILITIES.

Municipal Bonds (page 60).....	\$104,100.00
Current Expense Warrants (page 47)..	8,085.39
Public Library (page 48).....	7.75
Municipal Bond Red. (Def.).....	158.22
Indebtedness Fund Wts. Legality of which is now being questioned (page 54) .....	96,221.88
Indebtedness Wts. not questioned (page 48) .....	135.15
Examiner's Findings (page 22)..... \$208,787.37).....	78.98
	<hr/>
	\$208,787.37

Excess of Liabilities over Assets.....	128,696.01
Declared illegal by Washington Supreme Court .....	96,221.88
Net Excess of Liabilities over Assets..	32,474.13

The summary includes some assets the city did not own in 1898. I have lived in Port Townsend for 24

(Deposition of George Anderson.)

years, and have been City Clerk for over 8 years. The city hall was built in 1891 or 1892. In 1898, it owned its hall and lot, and also a building and lot on Washington Street, which are valued in the appraisal at \$37,000. The other assets listed under the head of "Real Estate and Fixtures" have been acquired since then. The city had a fire department in 1898, but had no public library.

On re-examination by Mr. Gnagey, in the absence of Mr. Shepard, the witness stated: When I stated in my cross-examination that the delinquent taxes for the city for 1891, 1892, 1893 and 1894 were \$49,373.36, I meant that they amounted to that sum on Jan. 1, 1897. There were small sums collected during the year 1897, but they did not materially reduce the amount. I do not know of any delinquent taxes for any year prior to 1891.

**Deposition of J. D. Lidders, for Defendant.**

J. D. LIDDERS, being called and sworn, on examination by Mr. Gnagey, attorney for defendant, testified as follows: I am County Auditor of Jefferson County, Washington, and have been since the second Monday in January, 1915. I have in my office a record showing the delinquent taxes for the City of Port Townsend for the years 1895, 1896 and 1897, which is an official record in the auditor's office. The delinquent taxes for the City of Port Townsend for the year 1895, on Jan. 1, 1897, were \$8,569.85, and for the year 1896, the whole amount to be collected on Jan. 1, 1897, was \$13,529.45. On

(Deposition of J. D. Lidders.)

Jan. 1, 1898, the delinquent taxes [141] for the city for 1895 were \$6,296.96, and for the year 1896, \$6,697.66, and the taxes for 1897 to be collected amount to \$11,251.54, which were not yet payable. Small portions of the delinquent taxes were collected during the different years and up to the time they were forfeited or cancelled by forfeiture of the property to the county in January, 1903, and the years following. The records of the auditor's office do not show any delinquent taxes of the city for any year prior to the year 1895.

A certified copy of the amended answer and the reply of the City of Port Townsend, in the case of Manchester Savings Bank, a Corporation, vs. City of Port Townsend, is as follows:

*“In the Superior Court of the State of Washington  
for Jefferson County.*

THE MANCHESTER SAVINGS BANK, a Corporation,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND, a Municipal Corporation,

Defendant.

**Amended Answer.**

The defendant in the above-entitled action for its Amended Answer to plaintiff's complaint, alleges:

I.

Defendant admits that the plaintiff is a corporation, as in the complaint alleged.

## II.

Defendant admits that at the time of the commencement of this action, this defendant was a municipal corporation created and organized under the acts of the Legislative Assembly of the Territory of Washington, in said complaint alleged; but this defendant avers that subsequent to the commencement of this action, pursuant to the laws of the State of Washington governing the reorganization of cities, this defendant was duly reorganized as a City of the Third Class, and since has been and now is a municipal corporation duly organized, created and existing under the general laws of the State of Washington.

## III.

Defendant admits the allegations of paragraphs three, four, five, six, seven, eight, nine, ten and eleven, in said plaintiff's complaint contained.

## IV.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations in the twelfth paragraph in said complaint contained, and therefore denies each and every part and portion thereof.

## V.

Defendant denies the allegations in paragraph thirteen [142] in the said complaint contained.

## VI.

Defendant answering the allegations in paragraph fourteen in the complaint, alleges: That under and by virtue of ordinances No. 160 and 212 in plaintiff's complaint set forth, this defendant did establish a special assessment district consisting of the

property fronting upon the proposed improvements and established boundaries thereof embracing the property abutting upon the improved portion of Washington Street from Taylor to Harrison Streets, and filed a plat thereof, and of the real estate subject to the assessment therefor, and duly made and levied and assessed the amount and value of said improvements against the said real estate improved and abutting upon the said improvement, and duly equalized the same, and caused the same to be extended upon the assessment-rolls, and caused to be prepared duplicate assessment-rolls, and placed the same in the hands of the proper officers for the collection and enforcement of said assessments, and the said defendant done and performed all matters and things in full compliance with the provisions of the said ordinances, for the assessing of the costs of the said improvements upon the property embraced within the said improvement district. That the proper officers of this defendant proceeded immediately to the collection of the said assessments so made, and did collect a large amount of the said assessments, and since the said time of the making of the said levy and assessments, this defendant, by its proper officers, has been and now is collecting the assessments and providing a fund for the payment of the warrants in the said complaint described. Defendant specifically denies that this defendant at any time failed, neglected or refused, or does fail, neglect or refuse, to comply with any of the provisions of the said ordinances, or to take any steps or make any provision for the payment of the

said indebtedness, or to comply with the terms and agreements of the contract in the same complaint alleged.

#### VII.

Defendant alleges, that the certain warrants drawn and issued to W. C. Williams for the various sums and amounts as in paragraph ten in plaintiff's complaint alleged, were payable to the said W. C. Williams from the certain fund known as the Washington Street Improvement Fund, the provision for the providing of which fund are alleged in paragraph six of this Answer, and the said warrants were not and are not payable in any other manner than from the Washington Street Improvement Fund, and the said warrants so payable as aforesaid, were taken and accepted in full payment of the various sums and amounts found to be due him under his said contract, and the said warrants were not and are not a charge against this defendant, other than the liquidation of the same from the Washington Street Improvement Fund upon which the same are drawn.

#### VIII.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph fifteen in plaintiff's complaint, therefore defendant denies the same and each and every part thereof.

#### IX.

That defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph sixteen in plaintiff's complaint



contained, therefore denies the same and each and every part and portion thereof.

X.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations in the seventeenth paragraph in the plaintiff's complaint contained, therefore denies the same.  
[143]

XI.

This defendant specifically denies that by reason of the negligence of this defendant for failure to make the assessment and collection of the same, for the improvement of the property abutting upon the street so improved, and by reason of the failure of this defendant to carry out the provisions of the contract in providing a fund for the payment of the said warrants, and by reason of any of the allegations in the plaintiff's complaint alleged, or otherwise, the plaintiff has been damaged in the sums and amounts in paragraph eighteen in said complaint alleged, or in any other sums or amounts whatsoever.

XII.

Defendant admits paragraph nineteen in said complaint contained.

XIII.

Defendant admits that on the 26th day of March, 1895, plaintiff presented its claims to this defendant for allowance, and that the same was not allowed except as a charge against the Washington Street Improvement Fund, and defendant denies that the said claims or any part thereof is due and owing said plaintiff from this defendant.

WHEREFORE defendant prays judgment of this Court that this action be dismissed, and for its costs and disbursements herein.

S. A. PLUMLEY,  
Attorney for Defendant.

State of Washington,  
County of Jefferson,—ss.

D. H. Hill, being first duly sworn, on oath says: That he is the Mayor of the City of Port Townsend, the defendant in the above-entitled action; that he has heard the foregoing Amended Answer read, knows the contents thereof, and believes the same to be true.

D. H. HILL.

Subscribed and sworn to before me this 4th day of January, 1897.

[Seal] J. N. LAUBACH,  
City Clerk of the City of Port Townsend, Wash-  
ington.

*In the Superior Court of the State of Washington  
for the County of Jefferson.*

THE MANCHESTER SAVINGS BANK,  
Plaintiff,

vs.

THE CITY OF PORT TOWNSEND, a Municipal  
Corporation,  
Defendant.

**Reply to Amended Answer.**

Comes now the plaintiff herein and replies to the amended answer of the defendant herein as follows:

1. Plaintiff replying to the sixth paragraph of said answer admits "That under and by virtue of ordinance No. 160 and 212 in plaintiff's complaint set forth, this defendant did establish a special assessment district consisting of the property fronting upon the proposed improvements and established boundaries thereof embracing the property abutting upon the improved portion of Washington Street from Taylor to Harrison Streets"; but plaintiff denies each and every other allegation contained in said paragraph six of said answer.

2. Replying to the seventh paragraph of said answer plaintiff denies each and every allegation in said paragraph contained except that the said warrants on their face were drawn in favor of one W. C. Williams upon the certain fund known as the Washington Street Improvement Fund.

Wherefore plaintiff prays judgment as in its complaint.

W. W. FELGER and  
STRUVE, ALLEN,  
HUGHES & McMICKEN,  
Attys. for Plaintiff.

State of Washington,  
County of Jefferson,—ss.

W. W. Felger, being first duly sworn, on oath deposes and says that he is one of the attorneys for the plaintiff in the above-entitled action, that he makes this verification for and in behalf of said plaintiff for the reason that said plaintiff is not within the State of Washington; that he has read the foregoing reply to the amended answer of the de-

fendant herein, knows the contents thereof and believes the same to be true.

W. W. FELGER.

Subscribed and sworn to before me this 15th day of January, 1897.

U. D. GNAGEY,  
Notary Public.

Copy of the foregoing reply received and service accepted Feb. 17, 1897.

S. A. PLUMLEY,  
City Attorney.

[Endorsed]: Defendant's Ex. 2. Filed Feb. 18, 1897. J. N. Laubach, Clerk.

**Exhibit "B."**

"Port Townsend, Wash., Feby. 15/98.

The City Council of the City of Port Townsend met in regular session today at 7:30 P. M. at the Council Chamber. At the call of the roll there were present the Mayor, the City Clerk, the City Atty., the City Marshal and all the seven Councilmen.

The minutes of the preceding regular meeting were read and approved under call of

**COMMUNICATIONS AND REPORTS**

a letter was read of Robt. C. Hill, reg. tax and the Townsend Gas & Electr. Co. reg. prices for electric light and laid aside to await call for unfinished business. [144]

Under call of

**REPORTS OF STANDING COMMITTEES**

the Clerk then read the approved reports of the City

Marshal and of the Judicial Officer, both for the month of January, 1898, which on motion were accepted and ordered filed.

Councilman Hastings made verbal report for Committee on Fire, Water & Light, reg.: Fire alarm box asked by Supervising Surgeon of Marine Hospital—stating that Surgeon did not like to apply to the U. S. Treasy. Department for authority to pay for such box. Some discussion follows, after which on motion of Councilman Kuehn, seconded by Councilman Hastings, the Committee of F. W. & L. was instructed to buy an auxiliary box and have it placed on the porch in front of the Hospital.

Under call of

## INTRODUCTION AND CONSIDERATION OF ORDINANCES

the clerk read a letter of Super. of the Western Union Telegr. Co. at San Francisco reg.: substitution of the word “public” for the word “police” in Section 3 of the respective ordinances lately passed, and stated that he had answered the letter. The statement by members of the Judiciary Committee and the City Attorney followed to the effect that this substitution had *not* been made inadvertently but with intent.

Under call of

## CLAIMS AGAINST THE CITY

the following approved requisitions and bills were read, viz.: of L. R. Martin for hay, kerosene, etc., and of Committee on Streets and Sidewalks for 250 blank notices, and of Fin. Committee for 50 blanks

for Treasurer's office, which were allowed, as also of S. A. Plumley, City Atty., for fees under contracts of Nov. 3/96 & of Feby. 16/97, for \$300 of P. M. Coyne for horseshoeing for \$4.50, of F. A. Willoughby for Marsh. office for \$4, which were ordered paid out of the current expense fund, and of Starrett Estate Co. for lumber furnished in Jany. '98, for \$35.95, which was ordered paid out of the Indebtedness Fd.

Under call of

#### APPLICATION FOR LICENSES

the Clerk read the application for wholesale liquor license of Thomas J. Tanner which was referred to Committee on Police, Rev. & License.

Under call of

#### UNFINISHED BUSINESS

the petition of R. C. Hill was called up and was on motion granted—after some discussion and after statement of the petitioner who was present. It appeared that, by a clerical error taxes had been marked paid for the '93 and '94 on Lot 3 Block 53, while it should have been on Lot 5 of the same block. The correction—as was stated by Councilman Peterson—already has been made by the County Commissioners. The City Treasurer was authorized to make the necessary correction of the resp. tax rolls.

The letter—or proposal—of John Lillie, Manager of the Townsend Gas & Electric Co., was then read. He offers to furnish electric light for the City at figures as follows, viz.: as many street lights as the Council may order from Feb. 15/98, until a new con-

tract is entered into, for each 2000 C. p. light on Morgan Hill, First Str., Plummer Str., \$15 p. m., for all such other light \$14 p. m. The bid of said Company for furnishing such light under a new contract was the only bid received and was then opened and read. On motion of Councilman Tanner, seconded by Councilman Kuehn, the matter was referred to the Committee on F. W. & L. to report at next regular meeting of the Council. [145]

The written offer of the Plummer Estate Co. was hereafter read reg.: sale to the City of lot 6 block 44, Or. Towns., together with the building thereon, all taxes including those of 1897, to be paid up, for the sum of \$400. This matter, on motion of Councilman Tanner, seconded by Councilman Torjuson, was then referred to the Committee on Publ. Bldgs.

The old claim of F. Terry for feeding city horses having been brought up by Councilman Tanner, it was—on motion of Councilman Turjuson, after some discussion, ordered to pay him \$6 by warrant on Current Expense Fund.

Under call of

### NEW BUSINESS

the Clerk read notice of Atty's in Street Grade Warrant cases and the City Atty. stated that notice had been served on the City by the U. S. Marshal in the case of condemnation proceedings of the greater part of the Juan de Fuca Addition, in reg. to which—on motion of Councilman Hastings, seconded by Councilman Tanner—it was decided to let the case go by default. On motion of Councilman Oliver, seconded by Councilman Tanner, the Treas-

urer was instructed to certify to the U. S. Court the amount of taxes on said property.

After which, on motion the council took a recess until 3 o'clock P. M., Feby. 16, 1898."

It was also stipulated as evidence in the cause, between the counsel of the parties, that the case in the supreme court entitled *The Bank of British Columbia of Victoria vs. The City of Port Townsend*, No. 2024, reported in Vol. 16 of *Washington Reports*, at pp. 450-459, was an appeal from a judgment of dismissal of the action brought in the superior court of Washington, which action, after the reversal by the supreme court of said appeal, resulted in the judgment of the superior court for Jefferson County in favor of the plaintiff therein against the City, which was one of the judgments paid by the warrants issued under the order of the City Council on February 17, 1898, and some of which warrants are in suit in this action; and that at the same time appeals were taken to the supreme court from judgments of dismissal by the superior court in Jefferson County in three other cases, entitled *E. M. Johnson vs. The City of Port Townsend*, No. 2021, *E. Heuschober vs. The City of Port Townsend*, No. 2022, and *First National Bank vs. Port Townsend*, No. 2023, and which cases are reported in Vol. 16 of *Washington Reports* at pages 701, 702, and the said three cases are the identical cases which resulted in judgments of the superior court under the said titles against the City, and which judgments are listed in the list of judgments which were paid under the order of the City Council, made on Feb-



ruary 17, 1898, by Indebtedness Fund warrants, some of which are in suit herein; and that all four of said judgments are identified by the contents of the Indebtedness Fund warrants issued for them. All four of said appeals were taken, argued and decided at the same time, as shown by the said Washington Reports and not otherwise. [146]

And now in due time defendant submits the foregoing as its proposed bill of exceptions herein, and prays that the same may be settled and allowed.

Dated this 28th day of February, A. D. 1916.

U. D. GNAGEY,  
HASTINGS & STEDMAN,  
Attorneys for Defendant.

The foregoing bill of exceptions is presented in due time and is true and correct, and same may be settled and filed.

May 24, 1916.

CHAS. E. SHEPARD,  
Attorney for Plaintiff.

**Order Settling, etc., Bill of Exceptions.**

And now on this 24th day of May, A. D. 1916, this cause coming on to be heard upon the application of the defendant to have its bill of exceptions settled, signed and filed and made of record in said cause, and the plaintiff appearing by its attorney, Charles E. Shepard, Esq., and the defendant appearing by its attorneys, U. D. Gnagey and Hastings & Stedman, of counsel, and it appearing to the Court that the foregoing bill of exceptions contains all the facts upon which said cause was tried before the undersigned presiding judge upon the trial of said cause,

and all the evidence and testimony offered or received upon the trial of said cause, and all objections made by counsel for the respective parties to the receiving or rejection of said evidence and all the rulings of the Court thereon, and all exceptions taken at the time thereto, said bill of exceptions is hereby settled, signed and ordered filed, and made of record herein—all of which is accordingly done by the undersigned, the judge before whom said cause was tried.

JEREMIAH NETERER,

Judge of the United States District Court for the  
Western District of Washington, Northern Division. [147]

Service of the within draft of proposed bill of exceptions by delivery of copy thereof to the undersigned is hereby acknowledged this 28th day of February, A. D. 1916.

CHARLES E. SHEPARD,  
Attorney for Plaintiff. [148]

**Exhibit 1.**

Saturday, December 18, 1897.

No. 1258.

**BANK OF BRITISH COLUMBIA**

VS.

**CITY OF PORT TOWNSEND.**

) Ordinance Book of the City of Port Town-  
send.

Exhibit "A" Plft. Proof filed ) Ordinance No. 274, Page 102.

Defendant object Overruled & Exception  
allowed.

Exhibit "B" Plft. Proof filed ) Ordinance 279 Page 103 of Ordinance Book.

Exhibit "C" Plft. Proof filed Ordinance 257 Page 100 of Ordinance Book.

Exhibit "D" Plft. Proof filed Ordinance 117 Page 87 of Ordinance Book.

Exhibit "E" Plft. Proof filed Ordinance 160 Page 89 of Ordinance Book.

Exhibit Original contract of City with Terry & Mc-  
Dougall.

Exhibit "F" Plft. Proof filed On Adams, Quincey and Monroe Streets.

Exhibit "G" Plft. Proof filed Original contract between City & W. C.  
Williams.

Exhibit "H" Plft. Proof filed Original contract between City & Chas.  
O'Brien.

Exhibit "I" Plft. Proof filed Warrant No. 81.

Exhibit "J" Plft. Proof filed Warrant No. 83.

Exhibit "K" Plft. Proof filed Warrant No. 84.

Exhibit "L" Plft. Proof filed Warrant No. 85.

Exhibit "M" Plft. Proof filed Warrant No. 97.

Exhibit "N" Plft. Proof filed Warrant No. 98.

Exhibit "O" Plft. Proof filed Warrant No. 99.

Exhibit "P" Plft. Proof filed Original Assessment Rolls of Monroe St. ft.  
Wash & Water Sts.

Exhibit "Q" Plft. Proof filed Original Assessment Rolls of Adams St. ft.  
Wash & Water Sts.

Exhibit "R" Plft. Proof filed Original Assessment Rolls of Jefferson St.  
ft. Jackson & Walker.

No. 1259.

JOHNSON

VS.

CITY OF PORT TOWNSEND.

Exhibit	"A"	Plft.	Proof	Ordinance No.	117	Page	87
"	"B"	"	"	"	"	160	" 89
"	"C"	"	"	"	"	235	" 97
"	"D"	"	"	"	"	279	" 103
"	"E"	"	"	"	"	203	" 94
"	"F"	"	"	Warrant	"	66	
"	"G"	"	"	"	"	74	
"	"H"	"	"	"	"	73	
"	"I"	"	"	Original Contract between City and W. C. Williams, Washington Street Fill			
"	"J"	"	"	Original Contract between City & Terry & McDougall, Monroe St. from Water to Washington.			
"	"K"	"	"	Original Contract between City & Terry & McDougall, Adams St. Water to Wash.			
"	"L"	"	"	Ordinance No.	117	Page	87
"	"M"	"	"	"	"	160	" 89

[149]

Saturday, December 18, 1897.

No. 1260.

FIRST NATIONAL BANK

VS.

CITY OF PORT TOWNSEND.

Exhibits	"A"	Plft.	Proof	Ordinance No.	216	Page	95
"	"B"	"	"	"	"	249	" 99
"	"C"	"	"	"	"	216	" 95
"	"D"	"	"	"	"	203	" 94
"	"E"	"	"	"	"	216	" 99
"	"F"	"	"	"	"	284	" 103
"	"G"	"	"	"	"	249	" 99
"	"H"	"	"	"	"	278	" 102
"	"I"	"	"	"	"	263	" 102

"	"J"	"	"	"	278	" 102
"	"K"	"	"	"	117	" 87
"	"L"	"	"	"	160	" 89
"	"M"	"	"	Warrant	"	14
"	"N"	"	"	"	"	32
"	"O"	"	"	"	"	26
"	"P"	"	"	"	"	34
"	"Q"	"	"	"	"	75
"	"R"	"	"	"	"	50
"	"S"	"	"	"	"	85
"	"T"	"	"	"	"	115
"	"U"	"	"	"	"	2
"	"V"	"	"	"	"	25
"	"W"	"	"	"	"	170
"	"X"	"	"	"	"	124
"	"Y"	"	"	"	"	167
"	"Z"	"	"	"	"	174
"	"A-1"	"	"	Original Contract by City & W. C. Williams, Washington St.		
"	"B-1"	"	"	Original Contract by City & L. H. Cays, Tyler St. Sidewalk		
"	"C-1"	"	"	Original Contract by City & L. H. Cays, Fill- more St. Sidewalk		
"	"D-1"	"	"	Original Contract by City & W. C. Williams, Calhoun & Minor St. Sidewalk		
"	"E-1"	"	"	Original Contract by City & Terry & Mc- Dougall, Quincy St. Improvement		
"	"F-1"	"	"	Original Contract by City & Chas. G. Warren, Jefferson St. Sidewalk		
"	"G-1"	"	"	Original Contract by City & Saul Shoply, Polk St. Sidewalk		
"	"H-1"	"	"	Original Contract by City & L. H. Cays, Law- rence St. Sidewalk		
"	"I-1"	"	"	Original Contract by City & Saul Shoply, Madi- son St. Improvement		
"	"J-1"	"	"	Original Contract by City & Chas. G. Warren, Washington St. Sidewalk		
"	"K-1"	"	"	Original Contract by City & Chas. O'Brien, Taylor St. Improvement		
"	"L-1"	"	"	Original Contract by City & Saul Shoply, Tay- lor. St. Improvement		
"	"M-1"	"	"	Original and duplicate assessment-rolls, Wash- ington St. Improvement		

- “ “N-1” “ “ Original and duplicate assessment-rolls, Tyler St. Sidewalk
- “ “O-1” “ “ Original and duplicate assessment-rolls, Fillmore St. Sidewalk
- “ “P-1” “ “ Original and duplicate assessment-rolls, Calhoun and Minor St.
- “ “Q-1” “ “ Original and duplicate assessment-rolls, Quincy St. Improvement

[150]

- Exhibits “R-1” Plft. Proof Original & Duplicate Assessment Rolls, Jefferson St. Sidewalk
- “ “S-1” “ “ Original & Duplicate Assessment Rolls, Polk St. Sidewalk, Lawrence to Winslow Ave.
- “ “T-1” “ “ Original & Duplicate Assessment Roll, Lawrence St. Sidewalk
- “ “U-1” “ “ Original & Duplicate Assessment Roll, Madison St. Improvement from Wash. to Jeff. St.
- “ “V-1” “ “ Original & Duplicate Assessment Roll, Wash St. Sidewalk from Taylor to Monroe
- “ “W-1” “ “ Original & Duplicate Assessment Roll, Taylor St. Improvmt., Wash. to 3d St.

Dft. objects to offering ordinances Nos. —.

Overruled. Exception allowed.

No. 1261.

E. HEUSCHOBER

vs.

CITY OF PORT TOWNSEND.

- Exhibits “A” Plft. Proof Ordinance No. —, Page —, Tyler to Lawrence
- “ “B” “ “ General Ordinance No. 117, Page 87
- “ “C” “ “ General Ordinance No. 160, Page 89
- “ “D” “ “ Original Contract between City & Saul Shoply, Tyler St. Improvement from Jefferson to Lawrence
- “ “E” “ “ Warrant No. 169
- “ “F” “ “ Duplicate & Original Assessment Rolls, Tyler St. Improvement from Jefferson St.

Dft. objects to offering Ordinance 295 &amp; 216.

Overruled. Exception allowed.

No. 1536.

MERCHANTS BANK

VS.

CITY OF PORT TOWNSEND.

Exhibits "A" Plft. Proof Printed book of Ordinances.

"	"B"	"	Ordinance No. 117
"	"C"	"	Ordinance No. 160
"	"D"	"	Ordinance No. 279
"	"E"	"	Original Contract between City & McDougall, Adams St. from Washington to Lawrence
"	"F"	"	Ordinance No. 216
"	"G"	"	Ordinance No. 263
"	"H"	"	Ordinance No. 336
"	"I"	"	Ordinance No. 299
"	"J"	"	Ordinance No. 301
"	"K"	"	Ordinance No. 302
"	"L"	"	Ordinance No. 240
"	"M"	"	Ordinance No. 235

[151]

Exhibit	"N"	Plft. Proof	Original Contract between City & W. C. Williams, Maple Avenue and Warrant No. 47 & Original & Duplicate Assessment Rolls
"	"O"	"	Original Contract between City & Terry & McDougall, Fillmore St. from Washington to Lawrence, Warrant No. 70 & original & duplicate Assessment roll for same.
"	"P"	"	Original Contract between City & Terry & McDougall, Washington St. Improvement from Quincy to Jackson & original & duplicate Assessment Rolls for same & Warrant No. 57
"	"Q"	"	Original contract between City & Chas. O'Brien, C. St. from 1st to 8th & original and duplicate Assessment Rolls for same & Warrant No. 227
"	"R"	"	Original contract between City & Chas. O'Brien, C & Ann St. & Warrant No. 60.
"	"S"	"	Original contract between City & W. C. Williams, Washington St. & Fillmore St. Sidewalk & original & duplicate Assessment Rolls for same and Warrant No. 60.

- “ “T” “ Original contract between City & —, Taylor St. Improvement from Washington to 3d St. and original & duplicate Assessment Rolls for same & Warrant No. 191
- “ “U” “ Original contract between City & —, 2d St. Improvement from H to F St. & original & duplicate Assessment Rolls for same and Warrant No. 192.
- “ “V” “ Original contract between City & McDougall, Adams St. cribbing & original & duplicate Assessment Rolls for same, Warrant No. 100
- “ “W” “ Original contract between City & J. M. Lockhart, Adams St. Sidewalk & Original & Duplicate Assessment Rolls for same & Warrant No. 28.
- “ “X” “ Original contract between City & L. H. Cays, Polk St. Sidewalk & original & duplicate Assessment Rolls for same & Warrant No. 13.
- “ “Y” “ Original Contract between City & R. W. Forsythe, Madison St. Sidewalk & original & duplicate Assessment Rolls for same & Warrant No. 67.
- “ “Z” “ Original contract between City & Charles O'Brien, C & Ann St. original & duplicate Assessment Rolls for same & Warrant No. 245.
- “ “A-1” “ Original contract between City & Chas. O'Brien, C & Ann St. & original & duplicate Assessment Roll & Warrant No. 239.

No. 1537.

THE COMMERCIAL BANK

VS.

CITY OF PORT TOWNSEND.

Same pleadings, etc., as No. 1536. [152]



No. 1538.

THE MANCHESTER SAVINGS BANK

vs.

CITY OF PORT TOWNSEND.

Same pleadings, etc., as No. 1536.

No. 1539.

JOHN BARNESON

vs.

CITY OF PORT TOWNSEND.

Same pleadings, etc., as No. 1536.

In causes Nos. 1258—1259—1260—1261—1536—1537  
1538 and 1539.

Judgment for plaintiffs.

1787.

Saturday, December 18, 1897.

R. C. HILL

vs.

J. W. STOCKAND et al.

MOTION TO CONFIRM SALE.

Order entered.

1790.

LANDES ESTATE CO.

vs.

YEP SUEY.

MOTION TO CONFIRM SALE.

State of Washington,  
County of Jefferson,—ss.

I, J. J. Bishop, Clerk of the Superior Court in  
and for the County of Jefferson, State of Washing-

ton, holding terms at Port Townsend, do hereby certify that the above foregoing is a true copy of the original pages of the Minute-book of the records of the Superior Court of Jefferson County, State of Washington, for the day of December 18th, 1897, as the same appears of record in my office.

Witness my hand and the seal of said court this 8th day of May, 1915.

[Seal]

J. J. BISHOP,

Clerk of Said Superior Court. [153]

Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Sep. 2, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

[Endorsed]: Defendant's Draft of Proposed Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 22, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [154]

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 1872.

FIRST NATIONAL BANK OF CENTRAL CITY,  
Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,  
Defendant.

**Hearing on Settling, etc., Defendant's Proposed Bill  
of Exceptions.**

Now on this day this cause comes on for hearing in open court, Chas. E. Shepard appearing for plaintiff and Hastings & Stedman and U. D. Gnagey appearing for defendant, whereupon plaintiff's counsel consents in open court to signing and filing of defendant's proposed bill of exceptions at this time, whereupon the Court signs bill of exceptions.

Dated May 22, 1916.

Journal 5, page 348. [155]

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*United States District Court, Western District of  
Washington, Northern Division.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO, a Corporation.

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND, WASHING-  
TON, a Municipal Corporation,

Defendant.

IN EQUITY—No. 1945.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND and  
CHARLES L. INTERMELA, City Treasurer  
of the City of Port Townsend,

Defendants.

**Opinion.**

Filed December 4, 1915.

CHARLES E. SHEPARD, Seattle, Wash.,  
for Plaintiff.

U. D. GNAGEY, Port Townsend, Wash.,  
HASTINGS & STEDMAN, Seattle, Wash.,  
for Defendants.

NETERER, District Judge:

The plaintiff has commenced two actions; one at law, and one in equity; the law action against the City of Port Townsend, and the equitable action against the City of Port Townsend, and Charles L. Intermela, Treasurer of the City of Port Townsend. A trial by jury was waived in the law action, and both causes were by consent of parties tried together, both involving warrants of the same issue, but of different number. In the law action, the plaintiff alleges, in substance, that the amount involved is that within the jurisdiction of this court; that the plaintiff is a banking corporation, incorporated under the laws of the United States, and located and doing business at [156] Central City, State of Colorado, and pleads the corporate capacity of the City of Port Townsend, that it is a city of the third class of the State of Washington, and alleges that the Bank of British Columbia is a corporation, organized under a royal charter from the United Kingdom of Great Britain, with its principal place of business in Victoria, British Columbia; that the Manchester Savings Bank is a corporation organized under the laws of the

State of New Hampshire; and further alleged, in substance, that an action to recover damages for a breach of contract was prosecuted in the State Court of Jefferson County by the aforesaid banks respectively, and the court by decision found for the plaintiffs in the said actions, and judgment was entered on February 1, 1898; that the City Council, at a regular meeting which commenced on the 15th of February following, and continued to and including the 16th and 17th days of February, had under consideration the matter of paying said judgments, and that a proposition was then made looking to the settlement of the said judgments, and it was agreed that warrants should issue for the amount of the judgments and should bear interest at the rate of six per cent instead of ten as provided by the judgments, and that warrants were thereafter, on the 18th of February, duly issued pursuant to such arrangement, for such amount, and the number of warrants is set out, of which the following is a form:

“\$500.00. Port Townsend, Wash., Feb. 18, 1898,  
No. 116.

(Seal) By order of City Council, Feb. 17, A. D.  
1898, of the City of Port Townsend,  
Wash.

The Treasurer of said city will pay Bank of British Columbia, or order, Five Hundred — 00/100 Dollars for part satisfaction of judgment of Bank

of British Columbia v. City, with int. at 6% per a.  
Indebtedness Fund.

D. H. HILL,  
Mayor of the City of Port Townsend.  
AUGUST DUDDENHAUSEN,  
City Clerk." [157]

And that the warrants were duly assigned, for value, to the plaintiff, and that said warrants were entitled to be paid out of the money belonging to the indebtedness fund before any money then in that fund or which would come into that fund would be applicable to the payment of the said warrants in the order of the number of issuance, except about \$300.00 prior indebtedness; and then states that the defendant city did levy one-tenth of a mill on its taxable property in 1898 and the same in 1899, and did make the levies for taxes for the payment of indebtedness from the indebtedness fund to and including the year 1908, but at no time was a levy made in excess of one mill on the dollar; and further states that the City of Port Townsend had a population of less than 20,000, and that under the laws of Washington, the delinquent taxes, under the act, approved March 6, 1897, for certain years were to be paid into the indebtedness fund; and then the complaint sets out practically the same facts with relation to the Manchester Savings Bank, and the assignment of the warrants to the plaintiff, the warrants being all of the same issue, and number alternating between the said banks; and alleges that these warrants were presented to the Treasurer of the City of Port Townsend on the 19th of February, 1898, for payment,

and payment was refused for want of funds, and such fact endorsed upon the back of the warrant. That after the warrant was so presented, it was for value sold and assigned to the plaintiff, who is now the owner and holder thereof. That on the 11th day of May, 1910, the plaintiff presented the warrant to the Treasurer of the defendant city, demanded payment, and the Treasurer refused payment, and the plaintiff "further shows that the said warrant, with 157 other warrants bearing the same date and made payable out of the indebtedness fund of said city, and numbered consecutively from 2 to 159, inclusive, have an aggregate value of \$65,983.47. Sixteen of the causes of action are predicated upon warrants issued in the first instance to the [158] Bank of British Columbia, and the remaining counts are predicated upon warrants issued to the Manchester Savings Bank and sold to the plaintiff.

The defendant admits the corporate character of the concerns mentioned in the complaint, and denies all allegations which are inconsistent with its affirmative defense, and then it sets up an affirmative defense in which it alleges that an action was prosecuted in 1898 in the State Court by the Bank named, in which it was, in substance, alleged that on the 26th of February, 1890, the defendant city entered into a contract for the grading and filling of certain streets in Port Townsend, and that local assessment districts were established under the laws of the State, and the ordinances of the City, and a special assessment fund was established and warrants issued against this fund to the contractor, and the improve-

ments were paid in this way, the form of warrant being as follows:

“By order of the City Council, the Treasurer of the City of Port Townsend, Washington Territory pay to —, or order, — Dollars, and charge the same to the account of — Street fund, being — month — year. Estimate of said street for —.

THE CITY OF PORT TOWNSEND guarantees the principal with interest at ten per cent per annum.

—————, Mayor.

Attest: —————, Clerk.”

and then alleges that the time allowed by law to collect the assessments and provide the fund for the redemption of the warrants had long elapsed, and that the said City is barred by the statute of limitations from enforcing and collecting the assessments against the property and upon the lots and lands fronting upon the streets, etc., and that the plaintiff is prevented from obtaining payment of the warrants out of such fund; that such warrants were issued and endorsed to the plaintiff, and that [159] afterwards judgment was entered in the State Court upon such warrants in favor of the plaintiff; and alleges the same facts with relation to the Manchester Savings Bank, and states that judgment was entered in favor of the plaintiffs in the said several actions against the City, and that at the time of the entry of such judgment the Supreme Court of the State had held that the City could not be liable for any default of the officers in making the special assessments, and that the judgment was entered without authority at law, and the Court therefore was without jurisdic-



tion, and that the officers of the defendant City permitted the judgment to be entered through fraud, and seek to defend against the demands of the plaintiff in this action upon that contention, and state that at the time these warrants were issued the City was beyond its constitutional limit of indebtedness, and that the warrants could have no force.

In the equity action, after pleading the corporate capacity of the several corporations, including the defendant City, and setting forth the issuance of the warrants in suit and the aggregate amount of all of the warrants issued in the same series, it is alleged that the defendant City and its Treasurer diverted from the indebtedness fund moneys in that fund from the payment of these warrants and did not pay the warrants in the order of their issuance, except warrant No. 2, which was directed to be paid by the Court, and that by divers entries made upon the official books of account kept in the office of the City Treasurer, funds were transferred from the indebtedness fund to the account of current expense fund in large sums of money, and that payment of these warrants was refused on the 15th of February, 1910, and that the misplacing of the account in placing the account of the moneys belonging to the indebtedness fund of the City, tended to conceal the fact of the diversion of said fund from the plaintiff, and that the City and its Treasurer are thus violating the duty devolving upon them to [160] keep safely all moneys which should come into the Treasurer's hands, to apply the moneys belonging to the indebtedness fund to the City in payment of claims

other than such as were lawfully payable out of the moneys belonging to such fund; and alleges that it has no adequate remedy save in a court of equity; and then prays that the defendant be required to make full disclosures with relation to such fund, and be restrained from paying out any moneys which have been or shall be raised from taxes levied by the defendant City for the payment of indebtedness fund, or any moneys which have been collected since the 31st day of January, 1898, or shall be collected from the taxes levied by the defendant City for the year 1896 or previous years and from penalties and interest thereon, except to pay warrants which have been heretofore called in for payment upon the indebtedness fund of the defendant City, and warrants drawn payable out of the indebtedness fund of the defendant City, consecutively numbered 2 to 59 inclusive, pending this cause, those being of the issue of warrants which are in controversy here.

Upon application, a writ of injunction *pendente lite* was issued on the 31st day of May, 1911.

The defendants in this case answer substantially as they did in the law action, with the further objection to the Court's jurisdiction to hear and determine the matter.

Defendants interpose five grounds upon which to avoid the demand of the plaintiff. First, the warrants were all issued and ordered by the council at an adjourned meeting, contrary to the express prohibition of the statute of the State. Second, they were all issued in satisfaction of judgments that were void for want of power of the Court to render

such a judgment upon the cause of action set forth in the complaint. Third, these actions have not been commenced within the time required by law. Fourth, the facts presented to the Court show (a) that the judgments in satisfaction of which these warrants were issued were the result of the same collusion, and were a fraud in law upon [161] the tax-payers. Fifth, that at the time the judgments were taken against the city, the warrants in suit were issued, and at the time the warrants in suit themselves were issued, the City was indebted over and above the constitutional debt limit, and hence these warrants were void, the warrants themselves having been issued in pursuance of a new agreement between the City Council and a warrant holder other than the judgments.

A careful examination of the decision of the Circuit Court of Appeals in *Perkins v. Intermela*, 205 Fed. 603, it would seem, concludes every contention in the law case against the defendants. The *Perkins, supra*, case, was an action to recover from the City Treasurer the par value and interest of warrant No. 2 of the issue of the series of warrants of which the warrants in issue in this case are a part. It is contended by counsel that the facts in this case can be distinguished from the facts presented in that case, and endeavor to controvert the presumption indulged in by the Court with relation to the adjourned meeting. To me, the distinction is not apparent when applied to the facts in this case. This matter was under continuous consideration. The

“adjournment” was merely a temporary cessation or dismissal, *Tipton v. Parker*, 74 S. W. 298. This matter of issuance of the warrants was not inaugurated at the resumed session, or taken up after indefinite postponement. No one was misled or surprised by its being taken up at this time. There was no secret action or conduct with relation to it. The Circuit Court of Appeals specifically takes up and disposes of the “adjourned meeting,” and likewise the power of the City Council and the Court under the “ordinance provision,” and also in the same manner disposes of the limitation of indebtedness, by stating on page 609:

“There is no evidence in the record showing that the City of Port Townsend was indebted beyond its statutory limitations at the time the indebtedness was incurred *for the local street improvements in question.*”

The same can be said of this case. There is evidence of indebtedness [162] covering the whole time from the inception of the local improvement warrants to the issuance of the warrants in suit, and evidence of the City’s assets at the time the warrants in suit were issued, but there is no evidence as to what assets the City had at the time the improvement warrants were issued and which were the basis of the judgment which supports the warrants in issue in this case. I do not think that if a liability exists that the indebtedness at the time of the issuance of the warrants in this case controls, but rather the indebtedness at the time the local improve-

ment was contracted, as stated by the Circuit Court of Appeals. The Court did not pass expressly upon the question of fraud, although it is stated that the issue was raised and discussed orally and in the briefs. I do not think from the record in this case that the Court can say from the issues raised or tendered in that behalf that fraud was practiced. Four of the cases in which judgments were entered and which are the basis for some of the warrants had been before the Supreme Court of the State upon appeal and the complaints held sufficient, while the question here sought to be raised does not appear to have been raised before the Supreme Court. The matter before the Court being merely a matter of pleading sufficient facts, and not going to the merits of the case, it could be forcefully argued that the doctrine of *stare decisis* applied and was controlling as to these cases. At any rate, whatever was done was not done to mislead the Court as to any fact.

The Court did have jurisdiction, and the particular case having been before the Supreme Court, the law of those cases may have been established. The Circuit Court, in *Intermela v. Perkins*, *supra*, at page 609, says:

“It is at least a disputed question whether such indebtedness as may be thrust upon the City by neglect or refusal to perform its obligations with contractors for local improvements in providing funds for the payment of such contractors, falls within the inhibition against incurring indebtedness beyond a specified sum.

Baker v. City of Seattle, 2 Wash. 576, 27 Pac. 462; Winston v. City of Spokane, 12 Wash. 524, 41 Pac. 888; McEwan v. City of Spokane, 16 Wash. 212, 47 Pac. 433; [163] Denny v. City of Spokane, 79 Fed. 719, 25 C. C. A. 164. But be that as it may, in any event the question is one involving the application of general law in connection with statutory construction, which a court of general jurisdiction is competent to entertain and decide."

Nor is the contention as to the statute of limitations persuasive, because it appears in this case that taxes were levied to supply this indebtedness fund, and nowhere do the facts justify the Court in concluding that such a demand had been made for the payment of money when the City was in a condition to pay and payment refused, as would bring the warrant holder within this limitation. Nor is the contention that the judgments were rendered by consent and therefore open to attack sustained by the record. The record shows that an answer was filed, issue was taken upon every traversable fact in the complaint, and findings of fact and conclusions of law were filed, the decree entered pursuant to the findings of fact and conclusions of law, based upon the testimony tendered in support of the issues. There is nothing in the record to show what the testimony was; nor is there any allegation of fraud practiced upon the Court or by the Court which resulted in the findings, conclusions, and decree. My attention is called to *State ex rel. Bradway v. Demat-*

tos, Mayor of Bellingham, filed by the State Supreme Court, November 10, 1915, in which the Court holds that an attempt to enforce a "consent" judgment entered against a municipality by mandamus, the answer setting up the fact of consent to judgment, is to be treated as a direct and not a collateral attack, and that full inquiry can be made into the entire transaction, and that such a judgment is not *res adjudicata*, and that want of power or authority to consent may always be shown to avoid the judgment whenever the record shows that it was rendered on consent, as shown in that case. This case does not apply.

It is urged as one of the grounds of fraud that so many exhibits were presented in the several causes that counsel could not, during the time that the causes were presented, have examined [164] them, showing affirmatively that testimony was presented upon the issue on trial, and in the absence of allegations of fraud on the part of the Court and litigants predicated upon facts set out, *U. S. v. Atherton*, 102 U. S. 372; *James v. Germania Iron Co.*, 107 Fed. 597, upon the authority of *Intermela v. Perkins*, *supra*, and *First National Bank of the City of Port Townsend*, 184 Fed. 574, I think that judgment should be entered in favor of plaintiff as prayed for.

All of the warrants in the law action are involved in the equity action, and as many more that were issued to citizens of the State and who could not sue in this court. The fact that the plaintiff is a National Bank does not have this right since the act

of July 12, 1882, which provided that the jurisdiction for suits in the Federal Courts by or against a National Bank shall be the same as other persons, *Whittemore v. Moskeag National Bank*, 134 U. S. 527. Diversity of citizenship in suits by or against National Banks being a prerequisite, *Danahy v. National Bank of Denison*, 64 Fed. 148, this court has not jurisdiction of the warrants issued to citizens of the State of Washington. At bar the suggestion was made that unless the plaintiff dismissed as to the warrants issued to citizens of the State the action could not be maintained. Plaintiff declined to dismiss, contending that since this was not an action to recover on the warrants but rather to enjoin the diversion of a fund that the court had jurisdiction, I think this case comes squarely within *Hooe v. Jamieson*, 166 U. S. 395, and that the bill in equity should be dismissed.

JEREMIAH NETERER,

Judge. [165]

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 3, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [166]

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*In the United States District Court for the Western  
District of Washington, Northern Division.*

FIRST NATIONAL BANK OF CENTRAL CITY,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.



### **Assignment of Errors.**

Comes now the defendant herein and files the following assignment of errors upon which it will rely in the prosecution of the writ of error in the above-entitled cause:

1. The Court erred in overruling defendant's demurrer to the amended complaint on the ground that the said amended complaint does not state facts sufficient to constitute a cause of action.

2. The Court erred in overruling defendants demurrer to the amended complaint on the ground that the said action was not commenced within the time required by law.

3. The Court erred in overruling defendant's objection made at the trial to the introduction of any evidence in this action on the ground that the said action had before said trial been dismissed because the plaintiff upon the Court's sustaining defendant's demurrer to the original complaint refused to plead further, and such judgment of dismissal has never been reversed and is now and was at the time of the trial a final judgment in this cause.

4. The Court erred in overruling defendant's objection to the introduction of the warrants in suit on the ground that they were not properly endorsed to show title in the plaintiff.

5. The Court erred in sustaining plaintiff's objection to the witness' George Anderson's stating, after such witness had duly qualified and shown that he had been City Clerk for over seven years and that one of his duties is to keep the minutes of the

City Council [167] how the meetings of the City Council at that time (the time of issuing the warrants in suit) compared in length with the meetings of the present council, and how long it takes the City Council as a rule to transact the business at their meetings.

6. The Court erred in overruling defendant's objection to the introduction of testimony showing that the case of the Bank of British Columbia vs. The City of Port Townsend, in part satisfaction of the judgment obtained in which said case, part of the warrants in suit were issued, is the same case that had been to the Supreme Court of the State and reported in 16 Washington reports at page 450, on the ground that such testimony was immaterial under the pleadings in this case, and in overruling defendant's objection to the Court's allowing the plaintiff to amend his reply so as to allege such fact and make such testimony material.

7. The Court erred in not sustaining defendant's objection to the introduction in evidence as an asset of the city for the purpose of determining whether the city had reached the constitutional debt limit, that part of the report of the Bureau of Inspection of the State of Washington for the City of Port Townsend, in which the value of the City Hall of such City is estimated, on the ground that the same is irrelevant and immaterial.

8. The Court erred in refusing to make the second finding of fact requested by the defendant in regard to the incorporation of the said defendant, showing what kind of corporation the said city was

and what powers it had at the time the original street grade warrants were issued.

9. The Court erred in refusing to make the third finding of fact requested by the defendant showing that the two cases, in part satisfaction of the judgment in which said cases, the warrants in suit were issued, together with six other cases, together with some other matters, were all tried transacted on the day as shown by [168] Defendant's Exhibit 1.

10. The Court erred in refusing to make the fourth finding of fact requested by the defendant and the last, part of the third requested finding, showing when the findings and judgments in the case of the Manchester Savings Bank vs. The City of Port Townsend, and the case of the Bank of British Columbia vs. said city, were signed and when the same were filed with the clerk.

11. The Court erred in refusing to make the seventh finding of fact requested by the defendant showing that "No contract, ordinance or resolution authorized the City of Port Townsend to guaranty the payment of any of the original street grade warrants."

12. The Court erred in refusing to make the eighth, ninth, tenth, eleventh and twelfth findings of fact requested by the defendant showing the general way in which the City Council dealt with the holders of street grade warrants and the result of their dealings, and now and under what circumstances the warrants in suit were issued.

13. The Court erred in refusing to make that part of the sixteenth finding of fact requested by

the defendant showing that no levy was ever made by the city council for the purpose of paying any of the series of warrants known as the "judgment warrants."

14. The Court erred in refusing to make the 18th finding of fact requested by the defendant, setting forth section 9 of ordinance No. 722, showing what moneys were placed in the Indebtedness Fund besides those moneys required to be placed there by law and the disposition made of them.

15. The Court erred in refusing to make the 19th, 20th, 21st and 22d finding, requested by the defendant, showing the financial condition of the City of Port Townsend during the years 1897 and 1898. [169]

16. The Court erred in refusing to make the 23d finding of fact requested by the defendant, showing that the city authorities had full knowledge of the decision of the Supreme Court of the State in the case of German-American Savings Bank vs. The City of Spokane, reported in 17 Washington Reports, page 315, and that the decision was a matter of common knowledge, at and before the time the said city authorities dealt with the street grade warrant holders and allowed the judgments to be taken and to be paid without appealing which resulted in the issuing of the warrants in suit.

17. The Court erred in refusing to make the 24th finding requested by the defendant showing that the regular meeting of the City Council held on February 15, 1898, was a short meeting, and that the city council adjourned from the 15th to the 16th and

from the 16th to the 17th of February, not because they had too much business to be transacted on the evening of the regular meeting but because the business they wanted to transact was not ripe for transaction.

18. The Court erred in refusing to make the additional finding of fact requested by the defendant showing that the defense interposed by the City of Port Townsend in all the street grade warrant cases was merely formal, that no proof was offered in behalf of the said defendant city of Port Townsend in said actions, but that that judgment was entered in all of the said suits by the consent of the City officers, and that no appeals were taken.

19. The Court erred in giving judgment for the plaintiff on the findings as made because the said findings do not sustain the judgment.

20. The Court erred in refusing to hold that the warrants in suit were issued in pursuance of a special agreement made between certain so-called street grade warrant holders and the City Council and its Mayor, which said agreement was entered into at an [170] adjourned meeting of said Council, against the express provision of the laws of Washington.

21. The Court erred in not holding that the warrants in suit were issued at an adjourned meeting of the City Council against the express provisions of the laws of Washington and are therefore illegal and void, and in refusing to find as requested by defendant that said warrants were so issued and are therefore illegal and void.

22. The Court erred in rendering a general judgment against the defendant for the amount of the warrants and in not limiting the payment of said judgment to payment out of the Indebtedness Fund as provided by law.

U. D. GNAGEY,  
HASTINGS & STEDMAN,  
Attorneys for Defendant.

Service of the within assignment of errors by delivery of a copy to the undersigned is hereby acknowledged this 28th day of June, 1916.

CHARLES E. SHEPARD,  
Attorney for Plaintiff.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 28, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [171]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

AT LAW.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Petition for Writ of Error.**

And now comes the City of Port Townsend, Washington, the defendant herein, and says that on or

about the 31st day of January, 1916, this Court entered judgment herein in favor of the plaintiff and against this defendant in which judgment and the proceedings had prior thereto in this cause certain errors were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this defendant prays that a Writ of Error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

U. D. GNAGEY,

Attorney for Defendant.

HASTINGS & STEDMAN,

Of Counsel for Defendant.

Service of the within petition for writ of errors by delivery of a copy to the undersigned is hereby acknowledged this 28th day of June, 1916.

CHARLES E. SHEPARD,

Attorney for Plaintiff. [172]

[Indorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 28, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [173]

*In the District Court of the United States for the  
Western District of Washington, Northern Divi-  
sion.*

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Order Allowing Writ of Error.**

This 28th day of June, 1916, came the defendant City of Port Townsend, Washington, by his attorney, and filed herein and presented to the Court his petition, praying for the allowance of a Writ of Error, an Assignment of Errors intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the Writ of Error upon the defendant giving bond according to law in the sum of six hundred and fifty dollars, which shall operate as a supersedeas bond.

Done in open court this 28th day of June, 1916.

JEREMIAH NETERER,

Judge.



Service of the within order allowing writ of error by delivery of a copy to the undersigned is hereby acknowledged this 28th day of June, 1916.

CHARLES E. SHEPARD,  
Attorney for Plaintiff.

[Indorsed]: Order Allowing Writ of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 28, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [174]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS, That we, the City of Port Townsend, Washington, a municipal corporation of the third class in said State, as principal, and the United States Fidelity & Guaranty Company, of Baltimore, Md., as surety, are held and firmly bound unto the defendant in error, plaintiff, First National Bank of Central City, Colorado, in the full and just sum of six hundred and fifty (\$650.00) dollars, to be paid to the said plaintiff, First National Bank of Central City,

Colorado, his certain attorneys, executors, administrators, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals, and dated this 28th day of June, in the year of our Lord one thousand nine hundred sixteen.

Whereas, lately at a District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said court, between the First National Bank of Central City, Colorado, plaintiff, and The City of Port Townsend, Washington, a municipal corporation, defendant, a judgment was rendered against the said City of Port Townsend, Washington, defendant, and the said City of Port Townsend, Washington, having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the [175] said judgment in the aforesaid suit, and a citation directed to the said First National Bank of Central City, Colorado, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, in said Circuit on the 28th day of July, next.

Now, therefore, the condition of the above obligation is such that if the said City of Port Townsend, Washington, shall prosecute said writ of error to effect and answer all damages and costs if it fail to make the said plea good, then the above obligation

to be void, otherwise to remain in full force and virtue.

THE CITY OF PORT TOWNSEND.

By U. D. GNAGEY,

Its Attorney and City Attorney.

UNITED STATES FIDELITY & GUAR-  
ANTY CO.

By JOHN C. McCOLLISTER, (Seal)

Attorney in Fact.

Approved:

JEREMIAH NETERER,

District Judge.

Service of the within bond on writ of error by delivery of a copy to the undersigned is hereby acknowledged this 28th day of June, 1916.

CHARLES E. SHEPARD,

Attorney for Plaintiff.

[Indorsed]: Bond on Writ of Error. Filed in the U. S. District Court, Western District of Washington, Northern Division. June 28, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [176]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Stipulation for Transmission of Original Exhibits  
to Appellate Court.**

It is hereby stipulated and agreed that the clerk of this court may transmit, with the record, to the Circuit Court of Appeals, the original warrants introduced by plaintiff in evidence herein, in lieu of copies thereof.

Dated this July 20th, 1916.

CHARLES E. SHEPARD,  
Attorney for Plaintiff.

U. D. GNAGEY,  
HASTINGS & STEDMAN,  
Attorneys for Defendant.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 21, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [176a]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

AT LAW—No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, COLORADO,

Plaintiff,

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Order Directing Transmission of Original Exhibits  
to Appellate Court.**

Upon stipulation of attorneys for the respective parties hereto, it is hereby ordered that the clerk of this court do transmit with the transcript in this case the original warrants introduced in evidence by the plaintiffs in this cause.

Done in open court this 21st day of July, A. D. 1916.

JEREMIAH NETERER,

Judge.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 21, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [176b]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 1872.

CITY OF PORT TOWNSEND,

Plaintiff in Error,

vs.

FIRST NATIONAL BANK OF CENTRAL CITY,

Defendant in Error.

**Praeceptum for Transcript of Record.**

To the Clerk of the above-entitled court:

You will please prepare and certify, as a tran-

script for use on hearing of writ of error, the following papers:

Amended complaint.

Demurrer to amended complaint.

Order overruling demurrer.

Answer of defendant.

Appearance of Charles E. Shepard as attorney for plaintiff and notice.

Order allowing amendments to answer.

Amendments to answer.

Order allowing plaintiff to amend its reply.

Amended reply.

Stipulation waiving jury trial.

Findings proposed by defendant.

Findings of fact and conclusions of law.

Exceptions to findings of fact and conclusions of law and to the refusal of the court to make certain findings.

Judgment.

Exceptions to judgment.

Order allowing defendant's exceptions. [177]

Stipulation and Order extending time in which to prepare and serve proposed bill of exceptions.

Minutes of the Clerk of April 24, 1916, showing permission to defendant to withdraw bill of exceptions to incorporate amendments, and

Minutes fixing amount of supersedeas.

Notice of Settling bill of exceptions.

Bill of Exceptions.

Minutes of Clerk of May 22, 1916, showing consent of plaintiff to settlement of bill of exceptions at that time.

Memorandum Opinion of Court.

Petition for Writ of Error.

Assignment of Errors.

Order Allowing same.

Writ of Error.

Bond.

Citation.

U. D. GNAGEY,

L. B. STEDMAN,

Attorneys for Plaintiff in Error.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

U. D. GNAGEY.

[Indorsed]: Praeceptum. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 5, 1916. Frank L. Crosby, Clerk. Ed M. Lakin, Deputy. [178]

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 1872.

THE FIRST NATIONAL BANK OF CENTRAL  
CITY, Colorado,

Plaintiff.

vs.

THE CITY OF PORT TOWNSEND,

Defendant.

**Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing typewritten pages numbered from 1 to 178, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court and that the same constitute the record on return to said Writ of Error herein from the Judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [179]



Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or re- turn—569 folios at 15c.....	\$85.35
Certificate of Clerk to transcript of record—4 folios at 15c.....	.60
Seal to said Certificate.....	.20
Certificate of Clerk to original ex- hibit—3 folios at 15c.....	.45
Seal to said Certificate.....	.20
	<hr/>
	\$86.80

I hereby certify that the cost for preparing and certifying record amounting to \$86.80 has been paid to me by U. D. Gnagey, Esq., and Messrs. Hastings & Stedman, Attorneys for Plaintiff in Error.

I further certify that I hereby attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 24th day of July, 1916.

[Seal]

FRANK L. CROSBY,  
Clerk U. S. District Court. [180]

**Writ of Error.**

*United States Circuit Court of Appeals for the Ninth Circuit.*

The United States of America,  
Ninth Judicial Circuit,—ss.

The President of the United States to the Honorable  
Judge of the District Court of the United States  
for the Western District of Washington, North-  
ern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said district court, before you, or some of you, between The First National Bank of Central City, Colorado, plaintiff, and the City of Port Townsend, defendant, a manifest error hath happened, to the great damage of the said City of Port Townsend, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, State of California, in said Circuit, on the 28th day of July, 1916, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of

appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 28 day of June, 1916.

Attest:

JEREMIAH NETERER,  
U. S. District Judge.

[Seal] FRANK L. CROSBY,  
Clerk of the District Court of the United States,  
Western District of Washington, Northern Division. [181]

Service of the within Writ of Error by delivery of a copy to the undersigned is hereby acknowledged this 28 day of June, 1916.

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Attorney for Plaintiff.

[Endorsed]: (Original.) No. 1872. In the Circuit Court of Appeals of the United States for the Ninth Circuit. First National Bank of Central City, Colorado, Plaintiff, vs. City of Port Townsend, Defendant. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jun. 28, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [182]

*United States Circuit Court of Appeals for the  
Ninth Circuit.***Citation on Writ of Error.**

United States of America,  
Ninth Judicial Circuit,—ss.

The President of the United States to The First  
National Bank of Central City, Colorado, and  
to Charles E. Shepard, Its Attorney, Greeting:

You are hereby cited and admonished to be and  
appear at the United States Circuit Court of Ap-  
peals for the Ninth Circuit, to be held at San Fran-  
cisco, in the State of California, within thirty days  
from the date of this writ, pursuant to a writ of  
error filed in the clerk's office of the District Court  
of the United States for the Western District of  
Washington, Northern Division, wherein The City  
of Port Townsend, Washington, a municipal corpo-  
ration of the third class in said State, is plaintiff in  
error, and you are defendant in error, to show cause,  
if any there be, why the judgment rendered against  
the said plaintiff in error, as in the said writ of error  
mentioned, should not be corrected, and why speedy  
justice should not be done to the parties in that be-  
half.

Witness the Honorable EDWARD DOUGLASS  
WHITE, Chief Justice of the Supreme Court of the  
United States of America, this 28 day of June, A. D.

1916, and of the Independence of the United States the one hundred and fortieth.

JEREMIAH NETERER,  
United States District Judge.

Attest:

[Seal] FRANK L. CROSBY,  
Clerk. [183]

I hereby, this 28 day of June, 1916, accept due personal service of the foregoing citation on behalf of the First National Bank of Central City, Colorado, the defendant in error.

CHARLES E. SHEPARD,  
C. W. R.

Attorney for Defendant in Error. [184]

Service of the within Citation by delivery of a copy to the undersigned is hereby acknowledged this 28th day of June, 1916.

CHARLES E. SHEPARD,  
C. W. R.

Attorney for Plff.

[Endorsed]: (Original.) No. 1872. In the District Court of the United States for the Western District of Washington, Northern Division. First National Bank of Central City, etc., vs. The City of Port Townsend. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jun. 28, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [185]

[Endorsed]: No. 2833. United States Circuit Court of Appeals for the Ninth Circuit. The City of Port Townsend, a Municipal Corporation, Plaintiff in Error, vs. The First National Bank of Central City, Colorado, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed July 27, 1916.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.